

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

I. CALL TO ORDER – On Monday, September 16, 2019, at 6:30 p.m. a Council Meeting was held in the City Hall Auditorium.

II. RECOGNITION OF MEMBERS PRESENT – Mayor Marston Lovell recognized the members of the Council and determined that the Councilors present constituted a quorum. Councilors present: Marshall Archer, Roger Gay, William Doyle, Lynn Copeland, Alan Minthorn, Micah Smart, and Nathan Johnston. City Administrator Kevin Sutherland and City Clerk Michele Hughes were also present this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL

➤ Recognition of Constitution Week

Mayor Lovell read the following proclamation:

WHEREAS: The Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law; and

WHEREAS: September 17, 2019, marks the two hundred and thirty-second anniversary of the framing of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS: It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate it; and

WHEREAS: Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week,

NOW, THEREFORE I, _____ by virtue of the authority vested in me as (Governor or Mayor) of the State or City) of _____ (in the City of) _____ do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the (State or City) to be affixed this _____ day of _____ of the year of our Lord two thousand _____.

Signed _____ SEAL Attest _____

➤ Parks & Rec. Resolution – Bureau of Parks and Lands

Councilor Archer moved, Councilor Copeland seconded “WHEREAS, the City Council supports the grant application made to the Bureau of Parks and Lands for the construction of a Boardwalk as part of the RiverWalk Trail project.

NOW, THEREFORE, BE IT RESOLVED, if the City of Saco is awarded a grant by the Bureau of Parks and Lands, the City of Saco agrees to accept the grant award and may begin the project. The City of Saco will comply with all applicable laws, environmental requirements and regulations as stated in the agreement.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SACO THIS DAY OF SEPTEMBER 16, 2019.”

ATTEST:

Michele Hughes, City Clerk

The motion passed with seven (7) yeas.

V. PUBLIC COMMENT

- Stephen Shiman, School Board Liaison – We had a finance meeting today and there is going to be some follow through when we have joint sessions with the council because it is a tricky year. The number of students is up significantly in the high school and the lower grades more than we anticipated and there isn't a lot of margin in this budget this year it turns out. It is a tricky matter. This is something that we are going to be in close touch with the council, so you are aware of the potentiality of problems are and how we are going to deal with them. So, it is really important in our communications and that is basically the report.
- Don Pilon – Item #C on Consent Agenda – The Mayor is going to make an appointment of Jack Cianchette as an associate member to the Historic Preservation Commission. My question Mr. Mayor is I don't understand the wisdom of appointing Mr. Cianchette as a member of the Historic Preservation Commission in light of the fact that he is a candidate for Council in Ward. Perhaps, a better tact might be wait until after the elections and see if he is elected. If he is not elected, then perhaps it might be a better opportunity at that time to make a nomination or put him in play for the Historic Preservation Commission. As a candidate, I don't see the wisdom. If he gets elected, you are going to have to take him off the Historic Preservation Commission and assign someone else. It is the timing, it is roughly the middle of September and he would actually serve maybe 30-40 days if he got elected and you would have to pull him off and you would have to re-appoint someone else. So, I don't see the wisdom of the council appointing him to this commission.
- Kelly Archer, 185 Bradley Street, Chair of the Historic Preservation Commission – Before you tonight is the HPC's recommendation of Jack Cianchette to be appointed as an associate member of the Historic Preservation Commission. I became aware of council concern of this recommendation yesterday. I'm here to provide full disclosure to the HPC recommendation of the Mayor's nomination and council approval for your discussion tonight. This year the HPC has been seeking to fill three associate member vacancies which was conveyed to the Mayor, Planning Department Heads Denise and Emily, Council liaison Roger Gay, and Michele the City Clerk. In early August the Mayor contacted me about 2 volunteers one of which you appointed at your last meeting Andrew Bracy to the HPC. Thank you very much for his appointment. The other was Jack Cianchette. It was disclosed by the Mayor that he is passionate about preserving Saco's history and that he may be running for a council seat. I did interview Jack and review 230-413 and the rules and order of business 3E (1-5) and he was presented to the HPC in August. The HPC agreed to have Jack placed on the council agenda. In regards, to Jack running for a possible council seat, it was discussed with Jack that the HPC would welcome him even on a short-term basis as the HPC would then request the Mayor at that time that Jack be appointed as our new council liaison since our beloved Roger Gay would not be running again. These discussions and notifications were duly documented and requested over a month ago. Also, please note that since three of our members have attend National Historic Conferences, one of our goals of the HPC is engaging young people into the preservation of our historic places nationally known as Youth Heritages seeking a youth as a member. In regards, to the HPC needs not only have we been seeking to fill vacancies we no longer a commission at need. We are now having public hearings on the 2nd Wednesday of every month and at times have needed to meet on the 4th Wednesday due to hearing an increased number of COA applications. We have also had a few hearings postponed due to lack of quorum, abstains, or recusals. Hence the immediate need of the appointment of new members. Having a lack of quorum is a disservice to the historic district owners and a timely response to their projects and contractors. But, also a burden to the Planning Dept. due process and extra payments to the Journal Tribune notifications. Thank you for your consideration in appointing Jack Cianchette as an associate member to the HPC and I welcome any questions you may have in your deliberation.
- Kevin Roche, 18 Vines Road & Property Owner in the Mill Brook Industrial Park – If he is watching, I am not the Kevin Roche of EcoMaine. He is a great guy and smart than I'm and runs a bigger organization than I ever would. But, to that constituent Lynn Copeland is your ward councilor in Ward 4. I want to read off a general tax payer concern on the issue that you are going to be discussing tonight. Saco is paying \$24,000 a month by the Saco Schools for an empty building. This was for July, August, and September. They signed

a 10-year lease with the Pre-K program to rent the Toddle Inn space in the Spring Hill Industrial Park. Nobody to my knowledge in the city departments were asked for checked in with to see if any restrictions in that property before the lease was signed. The Mayor was attending one of the executive sessions, but I don't think you are at liberty to give out the address. Again, it is a tough question because it was debated about whether you could disclose. There is now an electrical report stating that the building has an exposed main power line and an ungrounded pool which is deadly for anyone. Pre-K did find other locations. But, as of today the schools have paid the \$72,000 for an empty building including all our friendly lawyers that I see around here that probably totals well over that. Equivalent to 3-4 teacher salaries at this point. Your school board votes on the superintendent contract come December for renewal. Allot of this infighting between city and schools is not becoming of Saco. City Hall has its rules and the school has their rules. What has been very quiet is the facts of Toddle Inn. Where do they stand in all this? There is a letter in your packet, I think page 161 that they have finally spoken in response to the city shut down. They said the school contacted them and they were reluctant to move forward. Now, the school has said in public forum that they contacted us. So, that is a big deal. As we all know business owners are responsible for where they are located, what the covenants are, and what the codes are. The business owner is responsible. So, who is doing the research there? There is no reason it is a secret of when this all started. When did this discussion start? The superintendent's affidavit says in the spring. But, in the notice to Pre-K parents on May 9th it was a few months of negotiations. I will give the benefit of doubt spring could start in early May. When, and who started this? That is the question who have to ask going forward.

VI. CONSENT AGENDA

Councilor Gay moved, Councilor Copeland seconded to approve consent agenda items #A, B, C, and D as follows:

A. Confirm Mayor's Appointment of Brad Paul to Zoning Board of Appeals – "Be it ordered that the City Council confirm the Mayor's appointment of Bradley Paul to the Zoning Board of Appeals for a 5-year term to begin September 16, 2019 and to expire on September 16, 2024". Further move to approve the order.

B. Confirm Mayor's Appointment of Richard Parker to the Zoning Board of Appeals – "Be it ordered that the City Council confirm the Mayor's appointment of Richard Parker to the Zoning Board of Appeals for a 5-year term to begin September 16, 2019 and to expire on September 16, 2024". Further move to approve the order.

C. Confirm Mayor's Appointment of Jack Cianchette as an Associate Member to the Historic Preservation Commission (HPC) – "Be it Ordered that the City Council confirm the Mayor's appointment of Jack Cianchette as an associate member on the Historic Preservation Commission, for a three-year term to expire on June 30, 2022." Further move to approve the Order.

D. Approval of Minutes from August 26th and September 3rd.

The motion passed with seven (7) yeas.

VII. AGENDA

A. ADMINISTRATIVE APPEAL ON ELECTRICAL CODE

Councilor Smart disclosed for the record that he has a pre-existing professional conflict, so he will be recusing himself from any consideration of this and will be sitting in the gallery.

Mayor Lovell noted that there are now six councilors, so if there is a tie vote I may plan on voting or actually allow the motion to fail. He asked the council, parties, and attorneys if they had any objection to him presiding of the meeting. There was no objection.

Mayor Lovell stated that during this process he has been in executive session on both sides. However, he has not been informed on anything associated with the decision on this except the material presented by the City Administrator which represents the material produced by each side. Also, the subsequent material you received today which came to us from Attorney Jacques. He asked if either side, or any councilor wished him to recuse his vote on this matter? There was no request for the Mayor to recuse his vote

Mayor Lovell noted that they had received additionally from Attorney Jacques through Mr. Sutherland a guideline associated with this appeal. (Shown below)

SACO CITY COUNCIL APPEAL HEARING

SACO SCHOOL DEPARTMENT'S APPEAL REGARDING 5 WILLEY ROAD

1. The Saco School Department Appeal will be reviewed by the City Council as an administrative appeal under Section 87.4 Appeals. Accordingly, the City Council will rely on the record that has been provided to the City Council. Absent unusual circumstances, there should be no new testimony and no new evidence offered during the hearing.

2. The procedure for conducting the meeting will be as follows:

- (a) The Saco School Department provides its opening statement in support of its Appeal;
- (b) The City of Saco responds;
- (c) The City Council may ask any clarifying questions of the two parties. Only if necessary, the City Council also may ask clarifying questions of other individuals present at the meeting but any such questions must be limited to the clarification of the evidence that has been presented by the parties. No new evidence should be elicited.
- (d) The Saco School Department provides its closing argument.

3. After the School Department's closing argument, the City Council should officially close the comment period and enter into deliberations. The City Council should make findings on the record regarding the issues raised in the Appeal, including but not limited to:

- (a) Whether the Saco Electrical Inspector and Code Enforcement Officer correctly determined that the use of the 5 Willey Road property by the School Department required Planning Board approval of a change of use;
- (b) Whether the City Council has authority to hear an administrative appeal of the Saco Electrical Inspector's decision to de-power the property because of a determination that the Saco School Department's use of 5 Willey Road violated applicable Covenants;
- (c) Whether the Saco Electrical Inspector and Code Enforcement Officer properly determined that the Declaration of Covenants, Conditions, and Restrictions for the Saco Industrial Park – Springhill Section (the "Covenants") did not authorize the proposed use of 5 Willey Road by the School Department;
- (d) Whether the Saco Electrical Inspector had reasonable basis to conclude that the premises at 5 Willey Road violated Saco's Electrical Code;
- (e) Whether under the Covenants, or the Saco Electrical Code or other applicable authority, the Saco Electrical Inspector had authority to de-power the 5 Willey Road property;
- (f) Whether the Saco Electrical Inspector followed proper procedures under the Covenants, or the Saco Electrical Code, or other applicable authority prior to de-powering the 5 Willey Road property.

4. At the close of deliberations, the City Council should provide its reasons for one of the following decisions (or an alternate decision crafted by the City Council):

- (a) The Saco Electrical Inspector properly ordered that electrical power to 5 Willey Road be de-powered; or
- (b) The Saco Electrical Inspector erred in ordering that electrical power to 5 Willey Road be de-powered.

Mayor Lovell also stated the council is making a finding that it is on the record and being recorded and that this could very well be evidence in a Superior Court proceeding.

#2 (a) - School Department Opening Statement – Attorney Adrienne Fouts, Drummond & Woodsum representing the School Department. I’m here for this appeal we initiated on August 1st. Appealing the electrical inspector’s decision of July 30th to de-power the site at 5 Willey Road. Thank you for your time.

Mayor Lovell asked if Attorney Fouts or Attorney Murphy object to the record that the council received from Mr. Sutherland? There was no objection from either attorney.

Attorney Fouts - Thank you for your time today and your time reviewing the record which admittedly is fairly extensive. The reason for that being the context of the larger dispute being that we all are familiar with related to the lease agreement and also the fact that the school department has affirmatively sought approval from the city. The approvals that the city is requiring on four different agencies from the city and that information has also been included. So, that contributed to the volume. But I think it was important context. The issue for the council tonight is actually a fairly discreet issue. There have been comments about the background about the lease agreement and that really isn’t what is before the council tonight. What is before the council is the limited issue of whether the electrical inspector acted properly on July 30th under the covenants that applied to the 5 Willey Road site and/or under the cities electrical code when he made the decision to de-power the site at 5 Willey Road. As you know, it is the School Departments position that that decision was made in error. There is one Primary reason for that position that really implicates both the covenants and the electrical code. It is this positive of the applicability of both. That is that at the time the de-powering decision was made on July 30th the knew that the school dept. was seeking alternative space for its Pre-K program and was not occupying the 5 Willey Road site. As I say that is really the dispositive of both questions because under the covenants and under the electrical code there would have had to be a use by the School Department in order to give the electrical inspector authority to exercise de-powering. I have included information in tab #2 of my submission on behalf of the School Department that leaves out the communications between my colleague Bill Stockmeyer who also represents the school dept. and the City Solicitor Mr. Murphy from July 24th of this year, which really shows that there was an acknowledgement by the school dept. of receipt of the July 19th notice letter from the city to the school dept. indicating and further that there was indication from school dept. that it was seeking alternative space for the Pre-K program. You will also see in that correspondence that we asked for a “extension of time” to remove some items of personal property from 5 Willey Road and then Mr. Murphy consulted with the city and graciously confirmed that the city was in agreement with allowing some additional time to remove items of personal property. So, needless to say I think it came as quite as surprise when the de-powering occurred 6 days later. It was for the stated reason of “summarily abating the school’s use” when the city knew that the school was not using the premises and even if it was there are far less, extreme means of addressing the issue. It is also laid out in our papers that there was some other events around the same period of time July 22nd, 23rd, and July 24th where the school board and the school dept. took steps to make clear to the public that it intended to seek alternative space for the Pre-K program for the year. On July 22nd Superintendent DePatsey sent a message to Pre-K parents which specifically says that the school dept. would be seeking alternative space. On July 23rd there was a vote of the school board specifically authorizing the Superintendent to seek that alternative space while simultaneously attempting to reach agreement with the city regarding the 5 Willey Road site. Then on July 24th there was a message from the school board to Pre-K parents that reiterates that intention. So, as of the date of the de-powering the city knew that because it was requiring certain approvals the school dept.’s contemplated use under the lease was not full steam ahead which is how it was characterized in the cities reply. As I say, that is significant because a use by the school dept. is what would trigger both the covenants and the electrical code. Under the covenants the article that is relevant for purposes of this appeal is article 7.1. That article only applies to purchasers or non-related occupants. The school dept. is not an occupant because it is not occupying the space and therefore article 7.1 does not apply to the school dept. and cannot be invoked against it. Even if that article did apply there are requirements to invoking it. One of which is a 30-day notice period. The school dept. was given 10-days’ notice and the de-powering occurred on the 11th day. A similar point is that article 7.1 only allows for self-help where there is an alleged violation of covenants that continues unabated after proper notice. Here there was no use by the school dept. So, there was no alleged violation that continued unabated. As an aside I wanted to say that I’m not putting before you the question of whether the school dept. contemplated use under the lease in fact violates the covenants. I don’t think that is an issue that you need to decide. I think you can decide article 7.1 and its applicability without reaching that issue. That particular question is actually a question that is a subject of another appeal that is pending before the Zoning Board of Appeals

and in my view is not before the council tonight. So, on article 7.1 even if it applied, even if it were properly invoked. It does not allow the extreme self-help the city exercised in this case. 7.1 and I know you all have it in your packets, so I won't read it, but it relates to abatement of physical conditions that violate covenants by physically entering the space to correct those violations. There is nothing in that article, there isn't even an implication in that article that the city has any plenary authority to take whatever steps it deems necessary to stop an alleged violation. Such broad self-help is likewise not recognized under Maine law. The basic concept of self-help is of course recognized under case law in Maine which Mr. Murphy has cited some of those cases in his papers. All of those cases are actually very distinguishable from these circumstances and none relate to a municipalities ability to exercise self-help in the context of covenants that apply to real property. So, for all of those reasons because it doesn't apply to the school departments use because it wasn't properly invoked and because it does not provide this extreme self-help remedy article 7.1 is not a justification for the electrical inspector's decision. Similarly, under the electrical code which is the other justification that is cited by the city for the decision section 8.13 provides for de-powering when the electrical inspector determines that a "use" of electrical equipment or its installation is found to be dangerous to human life or property. The background and the context I think are really important here. I think it is very significant that no health or safety concerns were raised with either Toddle Inn or the school dept. prior to the time of de-powering. That is a period of approximately 3 months at least when the city knew of the lease to the time of de-powering. Additionally, both letters and they are somewhat different that were sent by the city to Toddle Inn and to the school dept. are silent as to any health and safety concerns. If the city had a health and safety concern during those 3-months, it didn't raise the issue. It never requested inspection or implicitly stated that it had any safety concerns. On those facts alone there isn't support for the decision. That the decision is justified as a health and safety concern. Furthermore, the city cited, did cite a general safety concern to Central Maine Power when it requested the de-powering. It also stated that it needed the opportunity to inspect the premises. So, no specific safety issue was cited, just a need to inspect the premises. That is both an admission that no inspection had happened which would be necessary for there to be a finding by the inspector of a health and safety issue. It is also at odds as to what the city cited to both the school department and Toddle Inn as a reason for de-powering the site. Based on that record it really makes no sense that the city had health and safety concerns so severe to require a de-powering but that it had never mentioned the to any of the parties that might be bringing children into that building. For a period of about 3 months there was ample opportunity for those issues to be raised and they were not. I will suggest that the safety issues really seem to be after the fact justifications for the de-powering. There is a fair amount of information in the materials that you have that relate to that. That relate to after the fact findings, concerns and steps that have been taken and if such issues exist and have been addressed the school department is glad those have been addressed. I want to touch on the fact though that after the fact issues and subsequent steps taken cannot be used to justify the electrical inspector's decision as of July 30th which is what the issue before you is. What is critical and relevant is what were the facts that existed at the time of the decision and what was the true basis for that decision. The school department really isn't in a position to comment substantively on the after the fact findings, the concerns and the sort of technical electrical information. But I do want to add like say that I don't think it is relevant to this determination tonight. But I do want to make a couple of points about them because I know you have a fair amount of material that relate to those issues. First, many of those issues relate to the pool area of the premises at 5 Willey Road. That area is explicitly excepted from the leased premises under the lease. So, the pool doesn't in any way relate to the contemplated use by the school department at 5 Willey Road. Additionally, I submitted today, and I believe it went through Mr. Jacques to the council a letter from the electrician that did work for Toddle Inn during this time period following the de-powering. That includes his view that there were no health and safety or life-threatening conditions on the premises. Just small issues that have since been addressed. Based on all of those facts there is no record to support de-powering the premises either under the covenants or under the electrical code and just as there needs to be use under the covenants to implicate article 7.1 there needs to be a use by the school department under section 8.13 of the electrical code to justify the de-powering. Because the school department was not using the premises on July 30th and the city knew that there was no basis to de-power the site. In closing the electrical inspector didn't have the authority either under the covenants or the electrical code to de-power the site with respect to the school department. The decision was in error under either rational and I expect the council can see the risk in sanctioning such extreme self-help especially without legal justification and where it appears in the broader context to be a pre-text or interfering with the lease agreement. So, I ask that the decision be overturned.

#2 (b) - City of Saco responds: Good evening. If any of the councilors have questions as I go along please feel free to interrupt me because I would rather answer your inquiry as it arises than not have you address it and wonder.

First, I don't think this is as broad an inquiry as this has been painted. The electrical code seems, and by the way this is an appeal of the electrical code, and the electrical code question before you is this section 87-2 which says "when the use of equipment or installations, and we would read installation there to mean the building, is found to be dangerous to human life. Then the electrical inspector with the approval of the code enforcement officer shall be empowered to have the premises disconnected". So, the very discreet question before you tonight is when the code enforcement officer and the cities electrical inspector contacted Central Maine Power on July 29th was the Toddle Inn premises itself dangerous to humans, could people get hurt? So, that request was sent by both Mr. Lambert and Mr. Desrosier and it cited 2 reasons. It cited the electrical code and the park covenants. That becomes important later. But, lets just focus on the electrical code now. Mr. Desrosier has said in his affidavit that he did inspect the Toddle Inn's file at City Hall, I did an aerial search from Google and I looked at what I could look at that was available. We are not at liberty to walk into the building. We looked at what we had. Based on that he saw certain conditions that in his mind created danger to people using the premises. There had been no inspections since 2005. A 14-year old building and no one from the city had gone back in. He sees a pool but there had never been an inspection of the pool. There is no electrical permit for the pool. He sees that the building had been converted from propane to natural gas. No one called us up and said come back and take a look at this. Oh, but don't worry, natural gas, what could go wrong? He also realizes because he is an experienced electrician that there are differing standards that electricians apply between schools that are going to house public children and private daycares. he looks at this confluence of factors and he reaches a decision in conjunction with the code enforcement officer that those themselves present risk of injury to people using the premises. They send this information to CMP. CMP accepts it. So, at least CMP at that point feels adequate basis to justify the de-powering. The next day CMP is on sight and in 5 minutes the building is powered down. What you are not hearing about is that the folks from Toddle Inn that are here tonight, they were upset that the building had been powered down. So, they actually file an appeal to the Maine Public Utilities Commission and this material should be in your packets. So, the Maine Public Utilities Commission has already had a chance to look at this electrical public danger issue. The Public Utilities Commission at the request of owner looks at what happened, and they decide, no, you know what the city officials did act appropriately. So, you have 3 sets of parties, a master electrician with over, Marcel how many years do you have? Marcel replied over 20 as a master electrician, 30 as an electrician, and 19 as an inspector. Tremendous experience as a master electrician. We have Central Maine Power, oh what do they know about electricity? Then we have the Maine PUC which is the governing body of Central Maine Power and all 3 of those parties conclude, yep you know what there is some risk their at Toddle Inn. This was the right thing to do, power it down. Now, it is not like the building is shut down permanently. Powering it down gives you opportunity to catch your breath and go take a look. It brings the parties to the table. You heard some comments earlier about oh well the city was heavy handed, we were leaving the building. Well, they moved in without our knowledge and yes they did tell us they were intending to leave, but I can tell you as representing landlords in the past intending to leave and out are 2 different things, okay. They are night and day. When property is taken out you can release it to someone else. But, intending to leave is a hope and a prayer for a landlord. We had to go on what we knew. Yes, we thought the schools were leaving but we were making a point that no, you are leaving and you can't get back in because there isn't going to be power in the building because we need time to get in there and look at it. All of this after the fact complaining by the schools, they never contacted us before they signed that lease and say hey come take a look at this building, we are going in. It looks kind of nice on the outside, maybe you ought to take a look on the inside because we are going to have kids there and we ought to make sure it is safe. Nope, not done. So, they move in, they move people, they move equipment, the people come out and the equipment stays. So, we go forward with the de-powering. Was Marcel justified? I think you are going to find based on those facts as they existed on July 30th were adequate. CMP thought they were adequate, and the Maine PC thought they were adequate. Now, the school department doesn't want to talk about what happened after July 30th, of course they don't want to talk about it. Because all the things that we subsequently learned verify that Marcel was actually forward thinking and actually there was more evidence that we weren't aware of as of yet. Allot of this unfolded as time went on. You will see that in the affidavit. But critical things start to happen. So, on August 8th Marcel, myself, and another city official decide to go to the premises and see what we can see. We can't go in the build, we can't go out past the fences, but we decide we will actually go right up to the building and take a look at it. There we discover there is a significant problem of where the main power line comes into the building. There were some changes that occurred after the approval of construction that resulted in the main power line located very near where the children's playground is and because of some fencing in the playground we are not quite sure why, but we think it is a very tight space and when people are in that area they actually hit the side of the building a couple of

times. Well, they hit on both sides of this main power line. It is essentially a live wire in a plastic tube. In a relatively thin piece of plastic. You look at it and had anyone hit that the wrong way they would have been killed, life threatening condition. We looked at that and was a little concerned. So, we immediately alerted the owner so they could correct it and they did to their credit. By the way, lets give credit where credit is due. The Toddle Inn stepped forward and rectified these conditions as we learned of them, and to the cities credit as soon as we learned of them, we flagged the Toddle Inn and let them know. So, this main power entry point was incredibly dangerous. Toddle Inn has come and put bollards in front of it to protect it so that it can't be hit. On August 15th the Toddle Inn's electrician calls and I think I have this right, and says hey, there might be a miswiring of the pool, Marcel nodded yes. The pool is improperly grounded. So, remember I mentioned earlier on July 29th Marcel could look at the city files and say that pool had never been inspected. There was no electrical permit for that pool. Had we had opportunity to go in we would have learned that the pool was mis-wired. We subsequently learned it and I understand there is the risk that electricity could back charge into the pool. Imagine, more shocking, that is a bad word what is significant is that condition had existed since 2005. My children attended Toddle Inn. We always had a very high opinion of it and they ran a excellent facility. I don't think anyone knew this condition existed and we are not blaming the Toddle Inn. I think they are as troubled by it as we are. But my children were at risk and maybe some one the folks in this audience their children were at risk. So, we learned that. On August 28th the city finally had a chance to send code enforcement and the electrical inspector inside the building and we learn there are additional problems. Including if I get this right the heating equipment that fed from the gas propane tank was also mis-wired, Marcel nodded yes. Which created the risk again that electricity could back feed to the propane tank. One can imagine what that would do. So, again to Toddle Inn's credit these issues are being corrected. The point of all this is to simply say what didn't seem to the school department to be big issues and they say it wasn't justified on July 29th despite what CMP thought and despite what the PUC thought we think it was enough. But it turns out there was even more that we didn't know about. But, for the fact that we powered it down we might still not know about those things. So, I would argue that this isn't government overreaching, this isn't government being heavy handed, this is government doing what we darn well ought to ask of government. We are here to protect our citizens and if we acted a little heavy handed, well I'm not shedding any tears about it folks, I tell you because we did the right thing. Marcel judged this situation and he is the most experienced person in the room, and we follow that. So, we think it was the right thing to do. So, in the strict issue of was Marcel justified? Did he believe and find that this property was dangerous I would argue that he did and the PUC agreed. We have this other issue though of the park covenants. So, I mentioned earlier that the letter that we sent to CMP on July 29th actually referenced 2 issues. It referenced the electrical issues and it also referenced the park covenants. In fact, that is also why Mr. Lambert signed that letter. The City Administration had express orders to the code enforcement officer, enforce the covenants. I'm directing you to enforce the covenants. So, Mr. Lambert's superior has given him an instruction. We look at how we can accomplish that. We believe the park covenants were being violated. We don't think that issue was appropriate to be discussed tonight for a couple reasons. But, if you want to, and it has been raised, I will talk about it. Understand that Mr. Lambert was also acting in his capacity as a city official to effectuate the enforcement of the park covenants. So, he also was involved and doing it at the direction of the city administration. Were the park covenants violated? We sure think so. Let's be clear about the park covenants. They apply to everybody in the park. They apply to owners, and they apply to occupants. Occupants would be parties that lease. Parties that are in the building on a free ride. However, they are there we intend that those park covenants apply to folks. I don't know how you can say that you are not in the building when you have a lease on it. I don't know how you can say tonight that you are not in the building when you have equipment in it. In my world that is a lease that is occupancy. Sure, as heck Toddle Inn thinks it is occupancy, they are taking a check for it. A pretty good check each month and good for them. So, I would say they were in the building. The covenants are clear they apply to people including lessee's like the school department. They apply even if the school department says attorney Murphy don't worry, we are leaving. Doesn't matter you are still in the building. You still have a lease. It still applies to you. The covenants are absolutely unmistakably clear that non-profits are not welcome unless they first come to you, the city council and ask for permission. Do any of you remember the school board showing up here and asking for permission? I'm seeing nodding heads. I don't remember that because they didn't. The covenants are clear. Why didn't the school department come and ask us for permission before they moved in? Did you get permission before they signed the lease? Did they ask you, no, they just signed the lease. I don't know why they did that without checking. The covenants are unmistakable. They are in the deed. They are in the registry of deeds. They can be found. Toddle Inn was certainly aware of them because they bought the property and it is right there in their deed. The covenants say you can no be a non-taxable entity. Why? Because you build industrial parks to generate tax revenue. You want property taxes and you want business

taxes. Well, the argument is Toddle Inn is still going to pay the tax. No, they are not. The school department is paying the property tax just because it is term at lease. They cut the check the check goes to Toddle Inn and Toddle Inn sends it back to the city. So, it is kind of a shell game. Oh, but wait, you the city are actually paying the taxes that pays the school that pays Toddle Inn that pays back to you. So, there is no new tax money coming to the city of Saco. You just shifted it from one pocket to the other. Those are your taxes, they are not new taxes. So, one of your main purposes has been thwarted. So, this argument that they are still paying taxes is a fantasy. But also, there are no business taxes being paid. The school isn't going to pay taxes on the equipment that is in that property. Do equipment taxes matter? Sure they do. We have a property in Mill Brook which is a biolab, good god what must they be paying in personal property taxes? We register vehicles from Enterprise Rental Car. It is not property taxes it is a business tax and excise tax. These businesses matter to us. So, the covenant is written specifically to protect that. We lose those taxes so clearly the use is something that wasn't allowed. They would have been told that I guess or you as the political body could have decided if given the chance. You know what we know the taxes that could be generated but we are willing to sacrifice those taxes because we believe in the schools and think the schools use is appropriate. Had they done that you would have had the option to weigh the taxes versus the school's goals. But again, they didn't come to you and ask you that. All we have is the situation of lost taxes. Our view is the covenants have been violated because of the type of use of the schools. The covenants do apply to the Toddle Inn and to the schools. The last question becomes does Mr. Lambert have the authority the to infatuate the remedies that are set out in the covenants, particularly section 7.1? Of course, he does! Who else would enforce them? Certainly, the school department isn't going to. Park covenants would be enforced by Mr. Lambert through Mr. Sutherland's office and in conjunction with my assistance or another attorney. They are the natural parties that enforce land use matters here in the city. Now, there is an argument that self help is too much. Why? There is case after case that allows parties to use self-help. What part of the covenant says we can't? It was expressly written to allow self-help. Actually, this self-help is relatively de minimis, it powers down the building for a modest amount of time. But it doesn't prevent an immediate re-powering when the fear for the condition has been resolved. In fact, it is quite simple. I was amazed how fast CMP can down-power a building. They go up and take a little hook and go like this (Mr. Murphy moved his hand to the right a little) and the wires are disconnected, and it is that fast. Which means that you can put it back on that fast. It is not like we had an armed guard there. It is not like we bolted shut the doors and did some physical damage to the property. This was an easy remedy that could be easily reinstalled when we felt it was safe and when we felt that it was certain that the school had left. So, there is no language in there and I'm pretty confident that the cities use of that authority would be upheld were this to go before the Superior Court. I thank you for your time and I will answer any questions if you would like. Mayor Lovell thanked Attorney Murphy.

#2 (c) – City Council – Ask clarifying questions of the two parties:

Councilor Archer – To Attorney Murphy: Attorney Fouts had identified about the “no use”. I remember reading and again you would be the expert because you wrote the e-mail. When did you give permission for the school department to go back into the building to grab their stuff? Attorney Murphy responded that we thought we wrote that e-mail say the 24th or 25th I engaged in some discussions with attorney Bill Stockmeyer. We de-powered the building and again, we were somewhat in the dark but understood there to be some equipment that obviously they might need to get out and we didn't know when the building would be re-powered so we had to figure out, are we going to let them in to get that equipment or not? Councilor Archer – It is my understanding that you did allow it, them to go back in and grab it. So, what they went in to grab was their own equipment so in effect they were using it at least for a storage unit. A very expensive storage unit. When they went to get their equipment wouldn't that be considered use? Attorney Murphy – Oh, I think as soon as you sign a lease you have use of the entire building. Councilor Archer – So, allot of those arguments where we can't make any decisions based the “no use” aspect of it, but in fact you had given permission for Saco school staff to go in and grab their stuff. So, they were effectively using it at the time of the de-energization? Attorney Murphy – Absolutely, oh yeah. Councilor Archer – Is it, common practice to conduct inspections full of summary when change of use is presented? I can re-word this again. Is it, common practice to conduct and inspection full of summary when a change in use is presented, especially when it is introducing 150 Saco school students into a building? Attorney Murphy – So, I asked Dick Lambert that specific question and his answer was “yes”, that is standard practice that we would go in and particularly we have a building that is 15 years old. So, you want to go take advantage of the opportunity to go in and see have things changed, has the owner expanded the use, changed the use, put in equipment or new facilities that you we not aware of?. It is not uncommon for people to alter their building after they get a certificate of occupancy and add, so a home owner might expand their deck. They might put a room in the basement. In a commercial facility there could be all kinds of changes, so yes, it is very

common. Councilor Archer – It was my understanding that we did have a staffer onsite. Her office was moved there. I was aware of this. Again, I’m just asking for clarification and wondering when she moved out. Was it the day of de-powering or if this information is incorrect I’m okay with that. Attorney Fouts asked Councilor Archer to restate his question again. Councilor Archer – I’m aware of a certain staffer, Julie Smith that she was operating out of the facility in that timeframe. When did she move out? Superintendent DePatsy stated her stuff was moved in on July 1st with most of the stuff we ordered as it came in over the next 20 or so days. When we couldn’t go in there she was remote most of the time. She went remote when we got the letter from Mr. Murphy. Councilor Archer – So, she went remote when you got the letter so that means as soon as you got the letter you stopped her from working onsite. Superintendent DePatsy – Well they had to get some stuff in there and Mike Garrity would check on the building to, to make sure we were mostly concerned about mold when the electricity was shut off. Councilor Archer – Was Mr. Garrity and Ms. Smith at risk while she was working? Superintendent DePatsy – I did, no. Councilor Archer – Okay. Were the city school members at risk by working there? Attorney Murphy – Absolutely. Councilor Archer – Thank you, that is all that I have.

Mayor Lovell – Would you say an answer Mr. Desrosier.

Mr. Desrosier – One of the major reasons that I felt power had to be disconnected was because the primary line side conductors that were going to the meter that Mr. Murphy spoke about. Had they been hit. Once I saw the gas from the aerial view that I did from Google Earth and saw they changed over to natural gas instantly I started wondering was the gas bonded properly? There was an explosion years ago in another state which caused a law suit which caused the gas code in the State of Maine to be required to be bonded. I was never invited in so, and as it turned out it was no bonded properly. Yeah, so she was at risk? Councilor Archer – When your affidavit states grave risk how often do city inspectors and people in your profession use those terms? Is it only at the extreme grave risk? Mr. Desrosier - Yeah, I don’t use it often. Councilor Archer – Thank you.

Councilor Copeland – So, we need to keep the focus very narrow because we could go on about this whole situation and the way it has been handled. Makes my head spin. So, we talk about occupant and the covenant. It is defined as occupant under the covenants is defined as “a lot owner, lessee, or optionee of the declarant or any other person and entity other than the declarant in lawful possession of the lot with permission of the declarant”. I would say a lease counts as lawful possession. I don’t understand how you can say that they were not in possession. Now, that we are hearing that there was actually a person in there, your argument is flat. So, we are trying not to just sit around and think about all the children that could be in this building when there has been a change from bottled gas to natural gas, without inspection. Just makes my head spin. The Maine PUC has agreed with the city electrician. In Mr. Desrosier’s affidavit he states that “Main power line not properly protected. The current transformer serving the building has a potential of delivering 240 volts with a 38,540 AMP AIC. I don’t know what a AIC is. Mr. Desrosier – The AIC rating is basically the amount of current you can get from that transformer before the line siders at CMP transformer would trip. Long story short. What you have is this is the line side of the meter and there is no current device. You have all of CMP’s power coming straight to your meter and it would take an excess of 38,000 AMP’s to trip CMP’s line that the distribution sent. Councilor Copeland – Wow. You (Mr. Desrosier) put in your affidavit that this is sufficient power to vaporize metals and cause instant death. Councilor Copeland directed her attention to Attorney Fouts and Superintendent DePatsy’s table, and what part of this do you not think it is an emergency and must be acted on immediately. I understand that nobody saw it and people were bumping into it, whatever, now I’m very happy that the Toddle Inn took care of it. But, how can you imagine in any sense of reality that this is not absolutely dangerous and cause for that electricity to be sure shut off.? Councilor Copeland gestured to Attorney Murphy and Mr. Desrosier’s table, I’m proud that we did the right thing.

Mayor Lovell acknowledged Attorney Fouts.

Attorney Fouts – Thank you. I agree that we need to keep the focus narrow because obviously there is a much broader context here. The broad context is important to some extent. Because I think.... (Mayor Lovell – Is the microphone working?) Attorney Fouts – Is it working? Can you hear me? Mayor Lovell – Yes. Attorney Fouts – The reality is that when you look at the facts it is quite evident that this is a pretext to interfere with the lease agreement. If there was a concern of this extreme nature, why would you call CMP and go through an administrative process. Why would your first step to call CMP and go through an administrative process to turn off the power. Wouldn’t you call the owners of the building and say don’t go in that building there is an emergency. None of the facts support that as of July 30th there was such an urgent concern for safety. What the facts show that all happened after, after the fact.

What the facts show is that and as stated from the city's attorney in the communications to the school department and to Toddle Inn is that the reason for depowering was to stop the school department from being able to perform under the lease and that that's really what the reason was. All of these other things are after the facts justification. Councilor Copeland – I thought we were staying focused on the actual electrical piece. Mayor Lovell – Right, and I also want to stay focused in that this is the question period and that we are coming up to a period of statements where we're going to stop inquiry of the two respondents and speak directly to how the council itself feels to come to the conclusion of the hearing. Councilor Copeland – Well, that was why I was asking about occupancy Mayor Lovell – I appreciate that. Thank you very much, very informative. Attorney Fouts – Can I respond on the occupancy please, thank you. The definition that you read of occupant it says a lot owner lessee or optionee, but then it says or any other person or entity other than the declarant in lawful possession. So, my reading of this is that the word possession modifies, modifies all the preceding words. So, you would have to be in possession of the actually occupying the space in order for this to be implicated. Now what is important about the communication that my office has had with Mr. Murphy is that we were specifically responding to the 10-day notice letter that was the specific intent of our of the email that you'll see at tab 2. It was extension of time in response to the cease-and-desist. So, I have to say it feels like a gotcha you know. Yes, you can keep your stuff there and we all agree we understand you're seeking alternative space but now we are going to say oh because you kept your stuff there we get to say that you were violating the covenants and we get to exercise extreme self-help. It was a professional courtesy in my view between counsel to to attempt to avoid a situation where we were moving equipment twice we had to move it out to some storage facility and then move it again when we find a space because you know we were under a tight time period to get the program started. So, I don't think it's true that there was a health and safety emergency because I think if there was, I would like to think the city would have informed people who might actually be entering the building.

Mayor Lovell – Yes, Councilor Copeland in fact it might well be that attorney Murphy could have a response. Councilor Copeland – I would be fine with that.

Attorney Murphy – I have now heard two times that this powering down was a pretext to interfere with the lease. If it is, it is the most inept effort to interfere with the lease because ever since we powered the building down we've been in continuous contact with Toddle Inn to explain to them what the problems were to assist them to quickly correct them and in fact we just sent them a letter saying you did a great job, thank you. We're gonna be able to let you get your building back open. So, it has this argument that it has to do with the lease, no it had to do with the safety of the building which we found out beginning of August how bad it was. But, when I communicated with attorney Stockmeyer, yes, we were trying to accommodate the schools to move out. But that didn't eliminate the danger of the structure. We still had obligations to go back into that building and check it. Because even if they left the Toddle Inn is sure as heck going to want someone else in there. The danger didn't go away. We just finally started to be able to spend time to look at it. So, it wasn't like we could oh well I got an email from attorney Stockmeyer and don't worry we're moving out. Well, I'm sorry but you started this ball rolling we now need to complete it and we are darn well gonna.

Mayor Lovell - Thank you very much. Some very clarifying questions Councilor Copeland.

Councilor Copeland – One is about being a landlord and I can assure you that the district court is filled with FED cases forceful entry and detainer. So, I have to agree and I'm a landlord and had to go through this process. Just because you say you are going to leave doesn't mean you're going to at all. So, that is just one point. The other one I wasn't to ask you, so the letter that you were copied on that was giving 30-day notice to the Toddle Inn. Did you receive that by ordinary course in the mail? Attorney Fouts – It was sent to I believe Mr. Stockmeyer. We received the June notice. Councilor Copeland – So, you have notice. Attorney Fouts – It was directed to Toddle Inn. Councilor Copeland – I don't care who it was directed to, you received it and you understood what it said. Attorney Fouts – There is no dispute about receiving that letter. Councilor Copeland – Well, you are bringing up the 30-day notice so I'm just trying to understand that better. Attorney Fouts – Yeah, receipt of a letter directed to someone else is a very different thing than legal notice under the covenants. Councilor Copeland – I understand the technicalities in Superior Court but we're in Saco City Hall and I just want everyone to hear that. Thank you.

Mayor Lovell – Any other questions to my left? Councilor Johnston.

Councilor Johnston – I will see if I can remember my question. I mean we spoke about keeping this to a narrow purview here but yet we continue to go into broader areas which I would say I believe is probably best suited for

Superior Court. So, I will go back and ask Mr. Desrosier sticking just to Chapter 87, in your affidavit you stated that you did an inspection of the city file and a Google Earth search is that correct? Mr. Desrosier – Correct. Councilor Johnston – In your capacity as electrical inspector you felt as though there was enough there for you to make a determination that there was potential for a life-threatening possibility. Mr. Desrosier – There was significant threatening, ah life-threatening situation existed. In fact, if your reading my affidavit approximately a month or so earlier we had enough service that had exploded on Lund Road. Once again on the line side of the service which caused the metal to vaporize and blow right off the building. So, yeah there was significant life-threatening situation was there. Councilor Johnston – So, again in your capacity that’s up to your judgement right. That is part of your job. On that alone I would say that he executed his job and I don’t really understand why we’re arguing this at all. Thank you.

Mayor Lovell – Councilor Minthorn.

Councilor Minthorn – So, if I understand this correctly the school’s got the key on July 1st right? Attorney Murphy – Correct. Councilor Minthorn – Sometime in the next few days there after Ms. Smith who’s already been acknowledged by other councilors, moved her personal property into the building, was operating out of the building, there were numerous deliveries of chairs whatever, desks whatever else the school had purchased and was being delivered to Toddle Inn over the next two, three, four weeks before it was powered down. So, I’m sorry Ms. Fouts, but if that isn’t use and occupation, I don’t know what is. You’ve got people there, you’ve got deliveries being made there, you’re using the building. You’re not just coincidentally there, you’re there for that.

Mayor Lovell – Before you go to the next question do you have a response attorney Fouts. Attorney Fouts – Yes, So, the relevant time, the relevant date is the date of depowering. What existed as of the date of depowering. On July 30th the city had know for 6 days that in response to its July 19th letter and as represented by counsel you know not just a person who is a tenant and has nowhere else to go and might say they’re leaving. But, as counsel with professional courtesies that the school department would not be using the space, would be seeking alternative space and the only use that existed as of that date was a use that the city had agreed to for an interim period of only personal property. Councilor Minthorn – But, again they were still even after it was de-powered and they were allowing you to enter somewhat at risk in the dark no knowing where the material was in the building I’m assuming. They were still taking things out of the building after it was depowered so there must have been a lot of stuff there already if now we are two or three weeks in we’ve had numerous deliveries the people are now working remotely but it’s taking us several weeks to get the stuff out even after it’s been depowered. That’s still using the building. I mean if I’m over at a storage place at the other end of the Industrial Park, I’m using that. You know, I’m taking stuff out they’re gonna be expecting rent. They obviously have been paying rent from everything we have heard. There is use there. Now, is it usable? Is there a certificate of occupancy? No, I get that. But from the standpoint of are we paying for the space? Do we have a key to access the space? Whether the lights or on or not we are using the property. Whether it is just as a storage barn at this point or not as this other stuff gets cleared up. Again, one of the things noted in one of the letters we received today was that the ground fault protection was required for the washer receptacle. So, if they staff had been doing any cleaning or whatever and utilized that washer there was a shock hazard there by that not being properly grounded in isolated on a ground fault circuit. So, there was risk to the people there had they used some of the items in the building as they were intended to be used. Mayor Lovell – Councilor are there any questions. Councilor Minthorn – No, there are no questions. It is just a statement reading this stuff and I think it needs to be said so the public hears that there were things that did put the individuals that could have been in the building as risk had they started doing things cleaning appropriately setting up classrooms as people do. Mayor Lovell – There is a statement period that we are going to be getting into.

Mayor Lovell - So, let me just say do you have a question? Thank you. Councilor Copeland – One minute. I’m going to refrain.

Mayor Lovell – First up is Councilor Doyle and then Councilor Archer.

Councilor Doyle – Thank you Mr. Mayor. So, attorney Murphy can you speak on whether every private building that changes over to natural gas gets an inspection and permit. Attorney Murphy – That would probably be a Dick Lambert question. Dick Lambert – All the ones that were using K ah number 2 oil and changed to natural gas I can’t say with certainty that we’ve been in each and every building. Marcel probably would because he would be the one to do the inspection. Marcel Desrosier – As natural gas is more prevalent, I have had allot of calls from electricians from gas because gas companies want them to bond the gas piping and it’s not in the National Electric Code it’s more

in the Maine Gas Code. That being said I inspect those when I have been made aware of them and I also warn every electrician that when he does do it to make sure there's a dielectric coupling in the gas side because some things gas companies don't install this dielectric coupling can cause sparked and cause a huge explosion also. So, there is all of things that go into it, but we're not made aware of it unless it brought it gets brought to our attention. Then when it is brought to our attention obviously, we do inspect. Councilor Doyle – Thank you. Attorney Murphy are we using the June 19th letter to, to Toddle Inn that CC'd the schools as the 30-day notice? Attorney Murphy – Yes. Councilor Doyle – Excuse me. The seven to cover the covenants under 7.1? Attorney Murphy – Absolutely. Councilor Doyle – Okay. Attorney Murphy – So, we addressed it to one party, but it was copied both to the superintendent and to their attorney separately. Attorney Stockmeyer did indicate to me he'd received the letter, he was aware of it. Bear in mind at that point I'm not sure we knew that the schools had taken occupancy. When we sent the notice in July, we were well aware the schools had taken occupancy. But they got it, and by the way I believe a Superior Court would find that if you have it in your hand and your attorney has it in their hand even if the letter isn't expressly directed and addressed to you it's still notice. Councilor Doyle. Thank you. So, if we're using that as the proper notice if you look at that letter it talks nothing about, it talks about use and it talks about the lease agreement and it talks about the money allocation. It does not talk about any abated portion. So, if you look at sections 7.1 of the covenants non-related occupation permits the city to abate or remove conditions of violate covenants. Well, what if we're looking at that how can we use that June 19th letter as the 30-day notice. The notice or the depowering is the issue being appealed and the depower was not notified 30-days beforehand because it wasn't found 30 behind beforehand. So, how can we use the June 19th letter to suffice the 30-day notice issue? Attorney Murphy – This really gets into the issue that we're really taking two different areas. There's the electrical code issue which we had authority to depower them on and then there is the covenants which also allow in our opinion self-help. So, the covenants require 30-days. We tried to notice as much as we knew in that 30-days and at the end of that letter I'm pretty certain at the end of June 19th letter there's reference saying hey look we need to get in there because you have a certificate of occupancy issue and within that within certificate of occupancy is the inspections that these folks do. We can't alert them to things that we don't know about. So, on June 19th did we at that moment think power was necessarily a problem? No, but we knew we needed to get inspectors in there and so we were flagging that for them. Again, they just simply said we don't need to do it. Councilor Doyle – Thank you.

Mayor Lovell – Councilor Archer.

Councilor Archer – This actually, I'm glad you asked about some point one because that's what mine's about. I'm reading the letter from I believe its attorney Fouts August 1st letter that you wrote to our city clerk. At the very bottom it says 7.1 requires 30-day notice. Are there times when exigent circumstances override any type of policies like this because I know for example if you're a police officer and you hear something's yelling you do your amendments do actually get broken for a period of time because it is based on the exigent circumstances. So, would this fall under exigent circumstances that would override or overrule or provide that that extra whatever you want to call it? Attorney Murphy – So, thank you. I think that is correct, but I think in this case we're not arguing that. We believe that this was an appropriate 30-day notice. We're trying to flag as many things as we could under the covenants saying here are the violations of the covenants here's this other issue regarding occupancy that we think is important. When we became aware as we learned more, we decided to send the extra 10-day notice that was really wasn't required. We did it as a courtesy to the schools at that point we knew they're in the building. We said look. Councilor Archer – Now attorney, under I believe its subsection 1 is what you call it at the very bottom that become subsections. Attorney Murphy – The footnotes? Councilor Archer – Yes, the footnotes, thank you I was drawing a blank for a second. She writes that she argues that the fact the city did not provide 30-days notice to the school department further supports that section 7.1 does not apply. Is this because it's an exigent circumstance is this argument? I will let her reply as well. Attorney Murphy – Yeah, attorney Fouts cannot argue for herself but I think the argument there is based on the fact that well you didn't send it to us therefore it doesn't count. Councilor Archer – But, it would count under exigent circumstances. Attorney Murphy – I think it counts under all circumstances all circumstances. Superior Court is going to accept that. Attorney Fouts – There is nothing in the covenants that relates to exigent circumstances and that makes sense because the covenants don't contemplate a health or safety issue. What you're talking about is more person, harm to a person. Councilor Archer – You had mentioned that we're trying to keep it on track but you're arguing 7.1 about covenants but we're here about safety issues correct? Attorney Fouts – We're here about both. Councilor Archer – But, you're arguing, okay because I thought earlier you said we are only going to be looking at safety issues and now it's blending which is kind of confusing if we're trying to stay on track as councilors. Attorney Fouts – Yeah, I didn't say we're here only on safety issues. What I said was we are only here on the narrow

issue of the propriety of the electric. Councilor Archer – And not the covenants? Attorney Fouts – No, because his decision actually relies on both. So, the reason I talk about both was because neither supports his decision. He relied on both bases and neither is an adequate rationale. On the question of notice, notice is and I know there is a lot of sort of common sense appeal to you receive something therefore you were on notice. Formal legal notice under a binding document needs to be carried out pursuant to the terms of notice. It wasn't with respect to the school department. We got 10-days notice. The June 19th letter is, is neither directed to the school department nor requires or requests any action by the school department. It is not noticed to the school department. The only request for action is directed to Toddle Inn. It was noticed to Toddle Inn. It was formal notice under the covenant. Councilor Archer – So, I'm reading again in your words as you typed it "the only notice that the school department was July 19-2019 letter giving it 10-days to cease and desist". So, you accept the letter that we wrote then as good, but no other letters are not? You accepted the first letter, which was that a legal document? However, you worded it. Attorney Fouts – No, what I'm saying is that there are formal legal requirements for notice. Councilor Archer – You accepted the 10-day notice as a formal legal notice requirement, because you literally said giving it 10-days to cease and desist. But, now you are contradicting a little bit on a 30-day. Attorney Fouts – No, I'm not contradicting. I'm saying a letter that is neither addressed to a party nor requires any action by parties is not formal notice to that party. A letter that later, very differently is addressed to the party and requests action from that party, that is notice with respect to that party. That's the difference. Councilor Archer – Do you have a counter (Attorney Murphy)? Attorney Murphy – I'm not aware of this legal notice rule. I think that Superior Court is going to say you sent it to the attorney and sent it to the superintendent, they are on notice. Typically, we don't address letters to 2 different parties. At the time Toddle Inn was the owner and I'm pretty sure we weren't aware that the school had moved in at that point when I was drafting that. But nonetheless, we didn't address it to the address box, but it was copied with the intention that they both get it. So, the superintendent and the schools' attorney was on notice. So clearly, they were aware. They are acting at risk if they ignored it. Councilor Archer – I like to bring things I know, it helps me to understand better. If a company goes to a union and says all the employees are terminated, does union literally have to write every persons' name to make it formal or is it by default we are laying off all members. It is something that I understand as I believe those group firings or terminations are done as a group not as individuals. Attorney Murphy – I don't know councilors, I really don't. Councilor Archer – I'm all set with this section. The next let's go back to the discussion on occupancy. It is the text message that we read, and I'm just confused. Is this considered occupancy? I'm just going to read it and it is very short and won't take much time. I'm explaining it longer than it will take. Mayor Lovell – It is a question though? Councilor Archer – I'm going to read it and then ask the question. I need to do it for context. "Dear Pre-K parents, As promised we are providing updates on everything Pre-K as we go through the summer months. Today, we got the keys to Toddle Inn and we will be moving furniture in next week. The teachers will see the space for the first-time tomorrow morning. Hope you have a great summer, we will continue sending you updates as things progress. Thank you. Superintendent DePatsey." Is this evidence that you just moved in, occupying. You literally say you have the keys. Attorney Murphy – Yes, they have the keys and they signed the lease. Councilor Archer – You are moving in furniture and your staff is showing up. Does that meet all 3 different types of criteria? Attorney Murphy – We think so. I don't believe the test is use. The covenants talk about even lessees. They have a lease right now that is why they are writing checks to these folks in the back for \$24,000 a month, because they have a lease. Councilor Copeland is right, it says lessees. They are lessees at least for the foreseeable future they are lessees. They still have the occupancy of that building at this moment. They may not have a single piece of equipment and not a single person in there. They have legal occupancy because they hold a lease. Until that lease is resolved, the school are the tenant in that property. Councilor Archer – Thank you. Attorney Fouts – The school department does not have legal occupancy of the space because the city will not permit the school department to occupy the space. The time period you know it is actually not relevant in my view whether any equipment ever entered the building or not. What is relevant is that on July 30th, was the school department a occupant under the covenants and the only argument that allows you to conclude that is that the city permitted the school department, what I thought was a courtesy, but maybe it was to allow a argument that we were occupying the space, allowed the school department to keep some equipment there in the interim so that we wouldn't have to move the equipment twice because there was a very short period of time in which the school department was seeking alternative space before the school year started. So, I think it is disingenuous at best to say that because we had equipment there with the permission of the city. We were violating the covenants and occupying the space and therefore subject to article 7.1 Councilor Archer – There again I like to use allegories that I can understand. So, I have tenants myself and they have leases. If in the unfortunate event say my property burns down, are they no longer my tenants because the property is no longer available for use? Attorney Fouts – I think those are mixed ... (inaudible). Councilor Archer

– I don't think so. We are talking about tenants and their ability to be on premise. If my property burns down, are they still my tenants, or do I just say hey have a good day or do I take care of them because they are still my tenants? Attorney Fouts – The question isn't tenancy, it is use and occupancy. Because we are not, the school department is not being permitted by the city to perform occupancy under the lease we are not an occupant. We are not, we are a lessee I agree because the lease is still in effect, but we are not using the premises, nor were we as on July 30th. The only exception being some articles of personal property there with the city's permission.

Mayor Lovell – The next step is the School Department provides its closing argument. After the School Department's closing argument, the City Council will officially begin its deliberation. I want to point out to the council that in the decision-making process as Attorney Fouts just pointed out the findings for the city can be either that the electrical system violated the electrical code under Chapter 87 or that the inspection was the proper result of the owner's violation of the covenants codes and restrictions.

#2 (d) – School Department provides its closing statement:

Attorney Fouts – There has been, I want to touch on a few different things. There has been talk about the significance of CMP and the PUC being satisfied that there was a safety issue and isn't that sufficient for our purposes. CMP based on the record before you simply accepted the representation from the city that there was a safety issue. There was no evidence submitted to CMP. There was no documentation submitted to CMP beyond that. The PUC essentially did the same and said when a safety issue is the reason CMP can depower. So, I think it is being over stated what the significance of CMP and PUC blessings this decision really is. In reality if there was a safety issue especially a safety issue of this extreme nature that is being characterized now I would hope that the first step wouldn't be to go through an administrative process to shut off the power, but instead would be to alert people who may be entering the building, have keys to the building, have access to the building. I think the fact that that didn't happen and the fact that now where in the depowering letters to the parties is there any mention of any safety concerns is just further evidence of the fact that the issue here is not whether after the fact there was electrical problems discovered. It is whether on July 30th there was a safety issue that allowed this electrical inspector to depower the site. From the cities own representation and the depowering letters the reason was not health and safety the reason was to stop the school department use of the building and the only use as I mentioned a moment ago, they only use that was continuing was that with the permission of the city understanding that the school department was seeking and obtaining alternative space for the Pre-K program. So, there isn't a basis under the electrical code to support this decision. The covenants similarly any use the might have implicated 7.1 was not in existence at the time on the date of July 30th and if it was with the permission of the city. Attorney Murphy said if the point was to interfere with the lease, we haven't done a very good job of it. Actually, not the case. The city has prevented the school department from occupying the space, that is what has happened. The fact that these issues has been corrected by Toddle Inn doesn't somehow create the ability for the school department to occupy the space. The issues have apparently been corrected by Toddle Inn and I learned today approved by the city but only for use as a daycare center. The use by the school department has not been approved. Something else that is still no longer permitted, is still not permitted I should say. Something else that I wanted to mention is you know this is clearly a highly politically charged issue. I know there are varying views about it and there are lots of frustrations about it. I think it is unfortunate that we are here on this appeal actually, because what the school department did following the 10-day proper noticed to it was to reach out to council for the city and say we are not going to occupy this space. Can we please keep some items of personal property here? The city says oaky, we hear you. Yes, you can keep some items of personal property there. Then we reach out and say we understand you are requiring a certain approvals for the school department to be able to use 5 Willey Road. We want to know what those are. We want to know exactly what you are requiring. So, based on the letters that we received we didn't really get any additional information from the city. So, based on letters that we had previously received we went ahead and sought those approvals. Then, these appeals are pending at the same time. I reached out to the city and said you know to Mr. Murphy and said I think it makes sense to stay the appeals. Let us seek our approvals then we can come up if we have to on appeal and join the issues. So, the school department has attempted to you know, we disagreed with the position of the city as is our prerogative. We disagreed with the position of the city. The city made clear it would not permit our use and we are not using the space. The city made clear that approvals would be required, and we are seeking those approvals. So, that is the broader context and that is the reality of the situation. On the narrow issue as I have said a few times neither the covenants nor the electrical code justify this decision as of July 30th. I would ask that you reach the question of the covenants. I think it is properly before you. The appeal provision of the electrical code mentions the electrical inspector's actions under the

code. I read that to mean that is because that would normally be the authority that he was acting under. I think that provision actually allows you to fully access his decision, the stated grounds for that decision, and whether they are proper and under neither the covenants nor the electrical code is this decision proper and I'd ask that it be overturned. Thank you. Mayor Lovell Thank you very much.

Mayor Lovell – We are now leaving the argument and comment period and going into the deliberations. Particularly during these deliberations those of you that made remarks earlier, I think if you could restate them so that they are part of the deliberation process because they were very good remarks and should be a part of the deliberatory part of this process. Councilor Archer, can I get a copy of the minutes? I talked allot so is it too soon? Mayor Lovell – You will have to catch it on video on Town Hall Streams. A couple of questions that should be discussed is under the covenants or the electrical code or any other applicable authority, did the electrical inspector have the authority to depower 5 Willey Road? Another is whether the electrical inspector followed the proper procedure under the covenant or the electrical code or other applicable authority prior to depowering? So, I'm looking for some deliberatory statements. Councilor Minthorn you had a very good one during your questions.

Councilor Minthorn – In reviewing tab 2 in our packet which was the June 19th letter. I believe is 53 or something in the packet. Mayor Lovell 48. Councilor Minthorn – Something like that. Mayor Lovell – Tab 2 starts at 48. Councilor Minthorn – 53 is the last page which shows that enclosures included the superintendent as well as attorney Stockmeyer. So, both were notified or copied on this correspondence. Then the next to the last paragraph states that if the schools can qualify for a certificate of occupancy. So, I think at that point the schools were on notice. There were requirements that needed to be met with the city with respect to inspections and whatever else might need to take place for a certificate of occupancy. That was June 19th. If I understand 30 days went by and we hadn't heard anything. If we hadn't heard anything then we sent out a 10-day cease and desist letter which I suspect had a little more oomph behind it and got their attention. But meanwhile everything keeps moving forward. Yes, the schools had moved stuff in and now they are moving stuff out based on our electrical inspector's research in the city files as well as what we could observe externally walking around the property and from google and whatever else. He noted some things of great concern. As I pointed out earlier in my remarks when the city inspected on 8/28 there was an absence of a ground fault circuit for the washing machine which was within 6 feet of a sink to prevent electric shock. It wasn't there. The bathroom fans some were not working which is another requirement. There were 7 items listed including the bonding of the gas pipe which I would think would be the most urgent and important of that list. Although I can't see splitting hairs over is electrocution more fun than being exploded is a bad joke to say given what happened in Farmington. But, chose your poison at this point for which one could or could not be and the fact that we were preventing children from being there is all the more reason these are all important. As I see this we have gone through the proper process. Now, maybe if there is anything, maybe we should have addressed it to all 3 instead of the courtesy copies or something like that. But nonetheless the notifications were there. There were efforts made if I understand it we didn't receive communications back or inquiries back or anything back in that first 30 days which is what precipitated the 10-day letter. Obviously, if they would have stepped forward, we probably wouldn't have gone to the 10-day letter because things had started in motion. So, I'm sorry I just can't see the school's argument at this point. It doesn't to me make sense that given the facts before us and documentation before us and printed words show you that notices were there. Thank you.

Mayor Lovell – A note for the record. Attorney Stockmeyer is a partner to attorney Fouts and also handles Saco School Department matters. Any other comments to my left, comments for the record? Yes, Councilor Copeland please.

Councilor Copeland – So, there was talk about the August 13th letter from the State of Maine Public Utilities Commission addresses to Ms. Carrier, Toddle Inn. It says I have reviewed the disconnection request. I confirmed with CMP that the disconnection of service was done due to safety issues related to service. I mean, you say well they only They have faith that our master electrician certified by the state and licensed by the state I'm sure is qualified. So, I don't view that they have to send somebody else. They already have someone qualified that they have licensed. He says it is an emergency and needs to be shut off, it gets shut off. So, what else did we talk about. We did talk about the occupancy. I strongly, I mean it is right on their, the face of the page it says occupant under the covenants is defined as a lot owner, lessee, or optionee of the declarant, or any other person or entity other than the declarant in lawful possession of the lot with permission of the declarant. A lease, keys, come on in kids with our text message, emails, that to me says occupancy. We've got our occupancy here. It still just, do you want everything

back in the record. Here we go. Our master electrician has stated in his affidavit the main power line was not properly protected. He provided photographs of dents all around there and the electrical box is all marred. The current transformer serving the building has a potential of delivering 240 volts with 38,540 amps AIC. This is sufficient power to vaporize metals and cause instant death. Vaporizing metals is rather colorful but instant death is horrific. We have our children there. We also see there was also a pool there that was not inspected or has a certificate of occupancy. Now, I just looked on Google Earth. This didn't occur to me, I thought it was like indoors and separated. It is out there. So, we have children that could just run off and it is possible that those children could have gone near that pool that had electrical issues. This is very serious. Very, very serious. There are extreme safety issues and I believe that our master electrician followed the protocols and was inline with his chain of command and did everything appropriately. I can't see otherwise. There is the Maine PUC concurrence, no permit for the pool, pool was not grounded, the conversion of gas. All of these things should have been a little bit obvious that somebody should have looked at this. So, we are talking about the covenants so then we can't not say that the people who were selling the property or leasing the property they were bound by the covenants to bring up this noncompliance and all this stuff. So, it starts there. Then it goes to the school's side where they didn't do the due diligence and didn't read the covenants that are clearly in the registry of deeds. So, there is plenty of blame to go around. But, I'm really proud that we did the right thing. That the children are not put in harms way and that is how I feel. Mayor Lovell – Thank you very much.

Councilor Johnston – Anything?

Councilor Johnston – Thank you. I'm not going to speak to the covenants issue because I believe that is better suited for Superior Court. I am disappointed that we are here to begin with because as Councilor Copeland just said if school officials had done the due diligence including the school board to actually look into this we wouldn't be here. If we went back to I believe March 18th when I sat here in a workshop criticizing the school department for the way they handled the potential site location for Young School and apparently that fell on deaf ears because they turned right around and got themselves into another nightmare mess. Speaking specifically to what we are here for which is Chapter 87. The city council in fact I believe this council most recently adopted the current standard of the National Electrical Code. Our electrical inspector Mr. Desrosier as he stated he reviewed the file on record, looked at Google images and based on his expertise he determined that there were life threatening issues. That alone is enough for me. I'm not an electrician. I might moonlight as one here and there but I'm not one. So, he has the expertise. I trust him with 22 + years. He is our expert and I side with him on this. Mayor Lovell – Thank you very much.

Mayor Lovell – Councilor Archer.

Councilor Archer – Yes, so I have taken this into consideration and number 1 I do want to recognize attorney Fouts. I think you did try to defend your position, but in the end, this is an appeal and it has to be more than a preponderance. It has to be enough evidence to overrule a decision that has been made. Now what I look into and talk to the councilors for is did the city have a right to pull the inspection? Did the city have a legal right to be on the property? Did the city have a right for the line of site assessment and be allowed to take proper action on what they saw? I do believe that is a yes. Again, the appeals you need sufficient evidence to overrule and I didn't see that occur. Lastly, I do want to thank the code department. You saved some of our children. I'm afraid of what could have happened when we put 150 of our own students, Pre-K students and to stand up and take action to protect our children I applaud your whole department, staff, and all of you who provided affidavits. Again, I didn't see enough evidence to overrule our code department. Mayor Lovell – Let me also make another quick comment for the record. The PUC letter is page 85 in our packet.

Mayor Lovell – Councilor Gay.

Councilor Gay – Thank you Mr. Mayor. We have been going back and forth all night long on this. But the most important concern is the children's safety. Mayor Lovell – Thank you very much.

Mayor Lovell – Councilor Doyle.

Councilor Doyle – Thank you Mr. Mayor. I just want to point out that I don't like to pit folks against each other, but the children were never in any harm. They never occupied the building. So that needs to be said and it needs to be

said loud. I do value the code department and thank you for the work that you do. Because, you did recognize some problems and they have since been corrected. But let's not make this an emotional charge issue about children in a facility they never occupied. We had put them on notice June 19th that the lease was not valid. We followed up that with a cease and desist later on in July. So, let's not make this an emotionally charged issue about children because that is not right. However, let's look at when we make a decision here and look at the questions that are before us. Let's look at the questions of whether the electrical inspector had the right to do what he did and follow through with that process. Mayor Lovell – Thank you.

Mayor Lovell – Councilor Archer.

Councilor Archer – Councilor I do have to descent. Mayor Lovell – Address the chair and not another councilor. Councilor Archer – Yes that is correct. To the chair through the council. Mayor Lovell – Through the chair. Councilor Archer – Sorry. I do descent from Councilor Doyle's position on there were no children involved. Children had been there for many years and these are Saco children. These are surrounding community children. So, there is an aspect of children's safety, just not in the sense of our Pre-K that was being presented. Do you recognize that? But children were at risk according to testimony, affidavits and what we have discussed today. Mayor Lovell – Thank you very much.

Mayor Lovell – Any other comments to my right? Seeing none. Comments to my left? So, the question at hand we went through the 3 block and are now in the 4 block. Is to get a motion from the council and this motion is either (a) and if it is (a) that "The Saco Electrical Inspector properly ordered that electrical power to 5 Willey Road be de-powered" that motion should include whether it is due to the fact that the electrical system violated the electrical code in Chapter 87; or if it were due as a result of the owner's violation on the covenants, conditions, and restrictions; or both. So, if the deliberation is not going on any further, could have a motion to either that or "The Saco Electrical Inspector erred in ordering that electrical power to 5 Willey Road be de-powered." Councilor Archer – I'll make the motion.

Mayor Lovell – Councilor Archer would you make the motion.

Councilor Archer moved, Councilor Johnston seconded that the Saco Electrical Inspector properly ordered the electrical power to 5 Willey Road be de-powered.

Mayor Lovell – And for either one of these or both, that it violated the electrical code, or it violated the covenants.

Councilor Archer moved, Councilor Johnston seconded, A finding for 4A can be either the electrical system violated the electrical code in Chapter 87, and it was the proper result of the owner's violations of the covenants, conditions, and restrictions.

Mayor Lovell – The motion on the floor now is that the Electrical Inspector properly ordered the electrical power to 5 Willey Road to be de-powered and the reason why was both a violation of the electrical code Chapter 87, and a violation in covenants, restrictions, and conditions.

Councilor Johnston seconded the motion.

Mayor Lovell – Any councilors wishing to comment on my right? Any councilors wishing to comment to my left? Seeing none.

Mayor Lovell called for a vote on the motions. The motions passed with six (6) yeas.

Mayor Lovell recessed the meeting at 8:35 p.m.

Mayor Lovell reconvened the meeting at 8:46 p.m.

Councilor Smart reassumed his council seat.

B. CREDIT ENHANCEMENT AGREEMENT BETWEEN THE CITY OF SACO, MAINE AND FORESITE REALTY LLC (FOR BUSINESS OPERATING AS BIDDEFORD-SACO DENTAL ASSOCIATES) – FIRST READING

A Credit Enhancement Agreement (CEA) for Foresite Realty, LLC. (Company) is being presented for consideration. This application is for the CEA, that will be a part of the existing TIF #15 Downtown Omnibus Municipal Tax Increment Financing District. The Credit Enhancement Agreement will be for 14 years, with the following terms: in years one (1) through five (5), Foresite Realty, LLC. will receive 50% of the TIF revenues, and the City will receive 50% of TIF revenue. In years six (6) through ten (10) of the Credit Enhancement Agreement, the Company will receive 45% of the TIF revenue, and the City will receive 55%. In years eleven (11) and twelve (12), the Company will receive 25% and the City will receive 75%. In years thirteen (13) and fourteen (14), the City will receive 100%. For any remaining years of the District, the City will continue to receive 100% of the TIF revenue. The CEA will have a cap of TIF revenue going to Foresite Realty, LLC, in the amount of \$396,000. The City will retain funds from TIF revenues to use for project costs outlined in the Development Program.

The CEA was reviewed by the Economic Development Commission at their September 9, 2019 meeting; recommended to go to the City Council for the first reading and public hearing. The CEA was also reviewed at the City Council Workshop held on September 9, 2019. The Council Order for this Credit Enhancement Agreement, which will be part of the First Reading, Public Hearing and Second and Final Reading will be as follows: “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with Foresite Realty, LLC. in substantially the form as presented to the City Council.”

Councilor Smart moved, Councilor Minthorn seconded to approve the First Reading and to schedule a public hearing on October 7, 2019, on the Order “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Foresite Realty, LLC in substantially the form as presented to the City Council.” The motion passed with seven (7) yeas.

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF SACO, MAINE

and

FORESITE REALTY, LLC

DATED: October 21, 2019

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THIS CREDIT ENHANCEMENT AGREEMENT, made and entered into as of October 21, 2019 by and between the **City of Saco** (the "**City**"), a municipal corporation and political subdivision of the State of Maine located in York County, Maine, and **Foresite Realty, LLC** (the "**Developer**"), a Maine limited liability company with an address of 485 Main Street, Saco, Maine 04074;

WITNESSETH THAT

WHEREAS, the City designated the Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Municipal (the "**District**"), pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, and approved a municipal development program and financial plan for the District (the "**Development Program**") on February 21, 2017. The District and Development Program were approved by the State of Maine Department of Economic and Community Development (the "**Department**") on August 7, 2018; and

WHEREAS, on February 19, 2019, the City approved the First Amendment to the District (the "**First Amendment**") and such First Amendment was submitted to the Department on February 26, 2019; and

WHEREAS, the First Amendment was approved by the Department on April 23, 2019; and

WHEREAS, the approved Development Program for the District provides that in the discretion of the City up to one hundred percent (100%) of the Tax Increment Revenues generated by new development within the District may be returned to the Developer during the remaining term of the District, pursuant to a credit enhancement agreement, for the purpose of defraying the Developer's project costs; and

WHEREAS, the City and the Developer have agreed as to the portion of the Tax Increment Revenues associated with the Developer's Project (as hereinafter defined) that will be returned to the Developer; and

WHEREAS, the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the credit enhancement agreement contemplated by the Development Program; and

WHEREAS, as required by Section 3.05 of the Development Program and the Department approval, the City held a public hearing on October 7, 2019 at which the provisions of this Credit Enhancement Agreement were approved;

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

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ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as set forth above, as it may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of Increased Assessed Value that is retained in each Tax Year during the term of the District, as specified in section 2.3 hereof.

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

“Current Assessed Value” means the then-current assessed value of all taxable real property constituting Developer’s Project within the Developer Property as determined by the City’s Assessor as of April 1st of each Tax Year during the term of this Agreement.

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

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

“Developer Project” means the health services facility and related site improvements to be constructed by Developer at Developer Property and originally consisting of a facility of approximately 15,000, square feet and any addition thereto during the Term.

“Developer Project Cost Subaccount” means the subaccount within the Development Program Fund in which the Developer Tax Increment Revenues shall be deposited.

“Developer Property” means the property identified as 485 Main Street (City Tax Map as Map 33, Lot 007).

“Developer Tax Increment Revenues” means that portion of all real property taxes assessed by and paid to the City in any Tax Year, in excess of any special assessment by City or any State or special district tax, upon the Captured Assessed Value, allocated and pledged to the Developer pursuant to Articles II and III of this Agreement, to support the Developer Project on the Developer Property.

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

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"Development Program Fund" means the Municipal TIF Development Program Fund described in section IV(D) 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 one subaccount: the Developer Project Cost Subaccount.

"District" shall have the meaning given such term in the first recital hereto.

"Effective Date" shall mean the date of execution of this Agreement.

"Financial Plan" means the financial plan described in section IV of the Development Program.

"Fiscal Year" means July 1st to June 30th of the subsequent calendar year or such other fiscal year as the City may from time to time establish.

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

"Original Assessed Value" means zero dollars (\$428,400), the taxable assessed value of the Developer Property as of March 31, 2020 (April 1, 2019), provided, however that in the event that a City revaluation occurs and results in an increase or decrease of any Developer Property that was included as a part of the initial Original Assessed Value as of April 1, 2018, the Original Assessed Value then in effect shall be increased or decreased by a like amount and such adjusted Original Assessed Value shall thereafter (subject to another City revaluation) be the Original Assessed Value for the purposes of this Agreement.

"Project Cost Account" means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

"Property Tax" means any and all *ad valorem* property taxes levied, charged or assessed against real property located in the District by the City, or on its behalf.

"State" means the State of Maine.

"Tax Increment Revenue Cap" shall have the meaning given to such term in Section 2.3.

"Tax Payment Date" means the later of the date(s) on which Property Taxes levied by the City on real and personal property located in the District are (a) due and payable, or (b) actually paid by or on behalf of the Developer to, and received by, the City.

"Tax Year" shall have the meaning given such term in 30-A M.R.S.A. § 5222(18), as amended, to wit: April 1st to March 31st.

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"Term" shall mean all Tax Years in the period beginning from April 1, 2020-March 31, 2021 through April 1, 2033-March 31, 2034, but not beginning before the Effective Date.

"City" shall have the meaning given such term in the first paragraph hereto.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

- (a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement.
- (b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.
- (c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.
- (d) Any headings preceding the texts of the several Articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

- (e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.
- (f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.
- (g) If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**ARTICLE II
DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

Section 2.1. Creation of Development Program Fund.

The City has created and established a segregated fund in the name of the City designated as the "Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Program Fund" (hereinafter the "Development Program Fund") to be funded by tax payments actually made by properties located within the District, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund is pledged to and charged with the payment of project costs as outlined in the

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Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1), in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B), and as set forth in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Development Program Fund 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.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund; Cap on Tax Increment Revenues.

- (a) For each Tax Year of the Term, the City shall retain in the District, for purposes of depositing Property Taxes associated therewith, the percentage of the Increased Assessed Value determined in accordance with the following table:

Tax Year	Retained Percentage
2020	50%
2021	50%
2022	50%
2023	50%
2024	50%
2025	45%
2026	45%
2027	45%
2028	45%
2029	45%
2030	25%
2031	25%
2032	0%
2033	0%

- (b) In each of said Tax Years, the City shall deposit into the Developer Project Cost Subaccount of the Development Program Fund, within five (5) business days of each Tax Payment Date, that portion of the tax payment made by Developer as represents Developer Tax Increment Revenues.

- (c) Notwithstanding the foregoing provisions of this Section 2.3, no deposits shall be made to the Developer Project Cost Subaccount to the extent such deposits would cause the aggregate amount of deposits to such Fund to exceed the Tax Increment Revenue Cap (as

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hereinafter defined). For purposes of this Agreement, the "Tax Increment Revenue Cap" means an amount initially equal to \$396,000.

(d) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to discontinue all or a portion of the City Project Cost Subaccount deposits and instead make those deposits to the City's general fund without further action or consents required by the Developer.

Section 2.4. Use of Monies in Development Program Fund.

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

Section 2.5. Monies Held in Segregated Account.

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

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Developer Payments.

(a) The City agrees to pay Developer, within thirty (30) days following each Tax Payment Date during the Term, all amounts then on deposit in the Developer Project Cost Subaccount; *provided, however*, the City shall have no obligation to make payment while any mechanics' liens shall be encumbering the Developer Property for a period of more than thirty (30) days. Upon the discharge or other termination of any such mechanics' liens, the City shall pay any amounts previously withheld on account thereof.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the Property Taxes assessed against real property within the Developer Property for the Tax Year concerned remains unpaid, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to that Tax Year shall be applied, first, to payment in full of taxes due in respect of the Original Assessed Value; and second, to the extent of funds remaining, to payment of the Developer Tax Increment Revenues for the Tax Year concerned.

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Section 3.2. Failure to Make Payment.

If the City should fail 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; or if the amount deposited into the Developer Project Cost Subaccount is insufficient to reimburse the Developer for the full amount Developer has actually paid in taxes, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's payment obligations hereunder.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove, for the Developer's own use and benefit so long as such use is consistent with the requirements of the Act, by check drawn by the City on the Developer Project Cost Subaccount of the Development Program Fund.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the Obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City 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 judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

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

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**ARTICLE IV
PLEDGE**

Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount Development Program Fund.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, and subject to section 2.3(c) above, the City hereby grants a security interest in and pledges to the Developer the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof and all sums of money and other securities and investments therein.

Section 4.2. Perfection of Interest.

(a) To the extent reasonably necessary to satisfy the requirements of this Agreement, the City will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount as defined herein and addressed further 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 shall be borne exclusively by the Developer. In the event such a fund is established under the control of a trustee or fiduciary the City 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) If the establishment of a segregated fund in accordance with this Section 4.2, becomes reasonably necessary to satisfy the requirements of this Agreement, the City'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 City 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 City 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 City.

Section 4.3. Further Instruments.

The City 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 City, and provided further that the cost of

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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 Development Program Fund.

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

Section 4.5. Access to Books and Records.

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

**ARTICLE V
DEFAULTS AND REMEDIES**

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

(a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;

(b) Any failure by the City to deposit into the Developer Project Cost Subaccount of the Development Program Fund on a timely basis, funds the City receives from the Developer that the City is required under this Agreement to deposit into the Development Program Fund;

(c) Any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof;

(d) Any failure by the Developer to pay when due, any real or personal property taxes lawfully assessed by the City to Developer; and

(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 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

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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;

(f) Developer's failure to commence construction of Developer's Project by July 1, 2020 or the termination of manufacturing activities at Developer Property after Developer's Project is completed.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.11 below concerning dispute resolution, 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 provided the Event of Default is not cured within such 30 day period.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.11 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. Nothing in this Agreement shall be deemed to excuse any non-payment of municipal taxes by Developer, or to limit in any way, the City's rights and remedies in that event. In the event the Developer pays some, but not all, taxes that are due, the portion paid will be allocated first to any delinquent taxes; second (to the extent of funds remaining) to taxes due on the original assessed value of the property; third (to the extent of funds remaining) to any delinquent taxes on increased assessed value from prior tax years; and last (to the extent of funds remaining) to payment of the Developer's share of the tax increment revenues. 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.

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ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall remain in full force from the Effective Date hereof and shall expire upon the later of the expiration of the Term or the payment of all amounts due to the Developer hereunder as of expiration of the Term and the performance of all obligations on the part of the City hereunder, unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

Section 6.2. Cancellation and Expiration of Term.

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

ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge and/or Assignment.

The City hereby acknowledges that the Developer may assign its rights hereunder to a successor owner of the Developer Project and may also from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Developer Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the City hereby consents and agrees to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for financing the Development Program, on one or more occasions during the term hereof. The City 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 City 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. Any obligation of the City under this section shall be conditioned upon pledgee or assignee's or Developer's satisfaction of Developer's obligations under this Agreement. Notwithstanding the foregoing, the City shall not be obligated to make payment to any such assignee or pledgee so long as there is any uncured default on the part of Company hereunder. Developer agrees that any payment by the City made in good faith to an assignee or pledgee hereunder shall, to the extent of such payment so made, discharge the City's obligation to Developer hereunder.

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Section 7.2. Pledge, Assignment or Security Interest.

Except as provided in Section 7.1 hereof for the purpose of securing financing for the Developer Project or an assignment to a successor entity or an affiliate entity, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, through its City Council, which consent shall not be unreasonably withheld.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City 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.

Section 8.2. Parties-in-Interest; No Partnership or Joint Venture.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and 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 City and the Developer. This Agreement is not intended to create any form of partnership or joint venture between the City 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 City; No Waiver of Maine Tort Claims Act.

No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Councilors nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof. Nothing contained herein is intended as a waiver of, and the City expressly reserves all protections and immunities under, the Maine Tort Claims Act, 14 M.R.S.A. § 8101 *et seq.* Developer agrees to indemnify and hold the City harmless from any loss, including court costs and reasonable attorney's fees in the event of litigation, incurred by the City as the result of

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the City's participation in this Agreement or in the TIF Development Program that is the subject of this Agreement, other than costs and fees incurred in connection with a breach by City of its obligations hereunder.

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; Venue for Suits

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Any suit to construe or enforce the provisions of this Agreement must be brought in the District or Superior Courts of York County, Maine; and otherwise shall be void. Developer expressly waives any claim to jurisdiction of the United States District Court over disputes arising under this Agreement, whether on account of diversity of citizenship or federal subject matter.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given on the third business day after mailing by registered or certified first class mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City Administrator
City of Saco
300 Main St.
Saco, ME 04072

With a copy to:

Director of Planning and Development
City of Saco
300 Main St.
Saco, ME 04072

If to the Developer:

Forsite Realty, LLC
485 Main Street
Saco, ME 04072

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With a copy to:

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.

Section 8.8. Amendments.

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

Section 8.9. Benefit of Assignees or Pledges.

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for the Developer Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Developer's right, title and interest herein. No such assignment or pledge shall limit in any way, Developer's obligations hereunder.

Section 8.10. Integration.

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

Section 8.11. 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 file an appropriate action for legal or equitable relief. If the Developer defaults in any of its obligations under this Agreement, the City shall be entitled to recover from Developer its reasonable attorneys' fees incurred in enforcement of such obligations.

Section 8.12. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and the Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) constitute a contractual obligation or binding representation of either party as to such assumptions, estimates, analysis or results; (b) prejudice

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the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (c) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

IN WITNESS WHEREOF, the City 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.

CITY OF SACO

By: _____
 Name: _____
 Its: City of Saco City Manager
 Duly Authorized by the City Council at its meeting on October 21, 2019

FORESITE REALTY, LLC

By: _____
 Name: _____
 Its: _____
 Duly Authorized

Captured Assessed Value & TIF Revenue Projection Table - City of Saco - Foresite Realty - TIF Model							
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	Captured Valuation @100% of Value Captured	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Developer Project Account	Captured Revenue to Municipal Project Account
1	2020	\$3,650,000	\$3,650,000	0.01959	\$71,493	\$35,746	\$35,746
2	2021	\$3,650,000	\$3,650,000	0.01980	\$72,256	\$36,128	\$36,128
3	2022	\$3,650,000	\$3,650,000	0.02001	\$73,028	\$36,514	\$36,514
4	2023	\$3,650,000	\$3,650,000	0.02022	\$73,808	\$36,904	\$36,904
5	2024	\$3,650,000	\$3,650,000	0.02044	\$74,596	\$37,298	\$37,298
6	2025	\$3,650,000	\$3,650,000	0.02066	\$75,393	\$33,927	\$41,466
7	2026	\$3,650,000	\$3,650,000	0.02088	\$76,198	\$34,289	\$41,909
8	2027	\$3,650,000	\$3,650,000	0.02110	\$77,012	\$34,655	\$42,357
9	2028	\$3,650,000	\$3,650,000	0.02132	\$77,834	\$35,026	\$42,809
10	2029	\$3,650,000	\$3,650,000	0.02155	\$78,666	\$35,400	\$43,266
11	2030	\$3,650,000	\$3,650,000	0.02178	\$79,506	\$19,876	\$59,629
12	2031	\$3,650,000	\$3,650,000	0.02202	\$80,355	\$20,089	\$60,266
13	2032	\$3,650,000	\$3,650,000	0.02225	\$81,213	\$0	\$81,213
14	2033	\$3,650,000	\$3,650,000	0.02249	\$82,081	\$0	\$82,081
14-Year TIF Total		\$51,100,000	\$51,100,000		\$1,073,439	\$395,852	\$677,587
					Percent of Total	37%	63%

Prepared by Camoin Associates, www.camoinassociates.com

Financials based on 50% of new revenues returned to developer in years 1-5; 45% in years 6-10; 25% in years 11 & 12; and 0% in years 13 & 14

C. CREDIT ENHANCEMENT AGREEMENT BETWEEN THE CITY OF SACO, MAINE AND BAXTER & CUTTS, LLC (FOR BUSINESS OPERATING AS QUINCE) – FIRST READING

A Credit Enhancement Agreement (CEA) for Baxter & Cutts, LLC. (Company) is being presented for consideration. This application is for the CEA, that will be a part of the existing TIF #15 Downtown Omnibus Municipal Tax Increment Financing District. The Credit Enhancement Agreement will be for 20 years, with the following terms: in years one (1) through fifteen (15), Baxter & Cutts, LLC. will receive 60% of the TIF revenues, and the City will receive 40% of TIF revenue. In years sixteen (16) through twenty (20) of the Credit Enhancement Agreement, the

City will receive 100% of the TIF revenue, and the Company will receive 0%. In any remaining years of the District, the City will continue to receive 100% of the TIF revenue. The CEA will have a cap of TIF revenue going to Baxter & Cutts, LLC, in the amount of \$225,000. The City will retain funds from TIF revenues to use for project costs outlined in the Development Program.

The CEA was reviewed by the Economic Development Commission at their September 9, 2019 meeting; recommended to go to the City Council for first reading and public hearing. The CEA was also reviewed at the City Council Workshop held on September 9, 2019. The Council Order for this Credit Enhancement Agreement, which will be part of the First Reading, Public Hearing and Second and Final Reading will be as follows: “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Baxter & Cutts, LLC. in substantially the form as presented to the City Council.”

Councilor Johnston moved, Councilor Smart seconded to approve the First Reading and to schedule a public hearing on October 7, 2019, on the Order “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Baxter & Cutts, LLC in substantially the form as presented to the City Council.” The motion passed with seven (7) yeas.

CREDIT ENHANCEMENT AGREEMENT

**between
CITY OF SACO, MAINE
and
BAXTER & CUTTS, LLC**

DATED: October 21, 2019

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THIS CREDIT ENHANCEMENT AGREEMENT, made and entered into as of October 21, 2019 by and between the **City of Saco** (the “City”), a municipal corporation and political subdivision of the State of Maine located in York County, Maine, and **Baxter & Cutts, LLC** (the “Developer”), a Maine limited liability company with an address of 22 Monument Square Suite 602 Portland, Maine 04101;

WITNESSETH THAT

WHEREAS, the City designated the Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Municipal (the “District”), pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, and approved a municipal development program and financial plan for the District (the “Development Program”) on February 21, 2017. The District and Development Program were approved by the State of Maine Department of Economic and Community Development (the “Department”) on August 7, 2018; and

WHEREAS, on February 19, 2019, the City approved the First Amendment to the District (the “First Amendment”) and such First Amendment was submitted to the Department on February 26, 2019; and

WHEREAS, the First Amendment was approved by the Department on April 23, 2019; and

WHEREAS, the approved Development Program for the District provides that in the discretion of the City up to one hundred percent (100%) of the Tax Increment Revenues generated by new development within the District may be returned to the Developer during the remaining term of the District, pursuant to a credit enhancement agreement, for the purpose of defraying the Developer’s project costs; and

WHEREAS, the City and the Developer have agreed as to the portion of the Tax Increment Revenues associated with the Developer’s Project (as hereinafter defined) that will be returned to the Developer; and

WHEREAS, the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the credit enhancement agreement contemplated by the Development Program; and

WHEREAS, as required by Section 3.05 of the Development Program and the Department approval, the City held a public hearing on October 7, 2019 at which the provisions of this Credit Enhancement Agreement were approved;

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as set forth above, as it may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of Increased Assessed Value that is retained in each Tax Year during the term of the District, as specified in section 2.3 hereof.

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

“Current Assessed Value” means the then-current assessed value of all taxable real property constituting Developer’s Project within the Developer Property as determined by the City’s Assessor as of April 1st of each Tax Year during the term of this Agreement.

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

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

“Developer Project” means the redevelopment of Cutts Mill Building 7 on Saco Island to be completed by Developer at Developer Property and originally consisting of a facility of approximately 9,440, square feet and any addition thereto during the Term.

“Developer Property” means the property identified as Cutts Mill Building 7 on Saco Island (City Tax Map as Map 037, Lot 001).

“Developer Tax Increment Revenues” means that portion of all real property taxes assessed by and paid to the City in any Tax Year, in excess of any special assessment by City or any State or special district tax, upon the Captured Assessed Value, allocated and pledged to the Developer pursuant to Articles II and III of this Agreement, to support the Developer Project on the Developer Property.

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

“Development Program Fund” means the Municipal TIF Development Program Fund described in section IV(D) 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 one subaccount: the Developer Project Cost Subaccount.

“District” shall have the meaning given such term in the first recital hereto.

“Effective Date” shall mean the date of execution of this Agreement.

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

“Fiscal Year” means July 1st to June 30th of the subsequent calendar year or such other fiscal year as the City may from time to time establish.

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

“Original Assessed Value” means zero dollars (\$284,400), the taxable assessed value of the Developer Property as of March 31, 2020 (April 1, 2019), provided, however that in the event that a City revaluation occurs and results in an increase or decrease of any Developer Property that was included as a part of the initial Original Assessed

Value as of April 1, 2019, the Original Assessed Value then in effect shall be increased or decreased by a like amount and such adjusted Original Assessed Value shall thereafter (subject to another City revaluation) be the Original Assessed Value for the purposes of this Agreement.

“Project Cost Account” means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

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

“State” means the State of Maine.

“Tax Increment Revenue Cap” shall have the meaning given to such term in Section 2.3.

“Tax Payment Date” means the later of the date(s) on which Property Taxes levied by the City on real and personal property located in the District are (a) due and payable, or (b) are actually paid by or on behalf of the Developer to, and received by, the City.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5222(18), as amended, to wit: April 1st to March 31st.

“Term” shall mean all Tax Years in the period beginning from April 1, 2020-March 31, 2021 through April 1, 2039-March 31, 2040, but not beginning before the Effective Date.

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City has created and established a segregated fund in the name of the City designated as the “Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) to be funded by tax payments actually made by properties located within the District,

and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1), in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B), and as set forth in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Development Program Fund 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.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund; Cap on Tax Increment Revenues.

(a) For each Tax Year of the Term, the City shall retain in the District, for purposes of depositing Property Taxes associated therewith, the percentage of the Increased Assessed Value determined in accordance with the following table:

Tax Year	Retained Percentage
2020	60%
2021	60%
2022	60%
2023	60%
2024	60%
2025	60%
2026	60%
2027	60%
2028	60%
2029	60%
2030	60%
2031	60%
2032	60%
2033	60%
2034	60%
2035	0%
2036	0%
2037	0%
2038	0%
2039	0%

(b) In each of said Tax Years, the City shall deposit into the Developer Project Cost Subaccount of the Development Program Fund, within five (5) business days of each Tax Payment Date, that portion of the tax payment made by Developer as represents Developer Tax Increment Revenues.

(c) Notwithstanding the foregoing provisions of this Section 2.3, no deposits shall be made to the Developer Project Cost Subaccount to the extent such deposits would cause the aggregate amount of deposits to such Fund to exceed the Tax Increment Revenue Cap (as hereinafter defined). For purposes of this Agreement, the “Tax Increment Revenue Cap” means an amount initially equal to \$225,000.

(d) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to discontinue all or a portion of the City Project Cost Subaccount deposits and instead make those deposits to the City's general fund without further action or consents required by the Developer.

Section 2.4. Use of Monies in Development Program Fund.

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

Section 2.5. Monies Held in Segregated Account.

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

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Developer Payments.

(a) The City agrees to pay Developer, within thirty (30) days following each Tax Payment Date during the Term, all amounts then on deposit in the Developer Project Cost Subaccount; *provided, however*, the City shall have no obligation to make payment while any mechanics' liens shall be encumbering the Developer Property for a period of more than thirty (30) days. Upon the discharge or other termination of any such mechanics' liens, the City shall pay any amounts previously withheld on account thereof.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the Property Taxes assessed against real property within the Developer Property for the Tax Year concerned remains unpaid, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to that Tax Year shall be applied, first, to payment in full of taxes due in respect of the Original Assessed Value; and second, to the extent of funds remaining, to payment of the Developer Tax Increment Revenues for the Tax Year concerned.

Section 3.2. Failure to Make Payment.

If the City should fail 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; or if the amount deposited into the Developer Project Cost Subaccount is insufficient to reimburse the Developer for the full amount Developer has actually paid in taxes, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's payment obligations hereunder.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove, for the Developer's own use and benefit so long as such use is consistent with the requirements of the Act, by check drawn by the City on the Developer Project Cost Subaccount of the Development Program Fund.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the Obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City 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 judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

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

**ARTICLE IV
PLEDGE**

Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount Development Program Fund.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, and subject to section 2.3(c) above, the City hereby grants a security interest in and pledges to the Developer the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof and all sums of money and other securities and investments therein.

Section 4.2. Perfection of Interest.

(a) To the extent reasonably necessary to satisfy the requirements of this Agreement, the City will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount as defined herein and addressed further 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 shall be borne exclusively by the Developer. In the event such a fund is established under the control of a trustee or fiduciary the City 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) If the establishment of a segregated fund in accordance with this Section 4.2, becomes reasonably necessary to satisfy the requirements of this Agreement, the City'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 City 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 City 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 City.

Section 4.3. Further Instruments.

The City 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

City, 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 Development Program Fund.

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

Section 4.5. Access to Books and Records.

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

**ARTICLE V
DEFAULTS AND REMEDIES**

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to deposit into the Developer Project Cost Subaccount of the Development Program Fund on a timely basis, funds the City receives from the Developer that the City is required under this Agreement to deposit into the Development Program Fund;
- (c) Any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof;
- (d) Any failure by the Developer to pay when due, any real or personal property taxes lawfully assessed by the City to Developer; and
- (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 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;
- (f) Developer’s failure to commence construction of Developer’s Project by July 1, 2020 or the termination of manufacturing activities at Developer Property after Developer’s Project is completed.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.11 below concerning dispute resolution, 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 provided the Event of Default is not cured within such 30 day period.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.11 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. Nothing in this Agreement shall be deemed to excuse any non-payment of municipal taxes by Developer, or to limit in any way, the City's rights and remedies in that event. In the event the Developer pays some, but not all, taxes that are due, the portion paid will be allocated first to any delinquent taxes; second (to the extent of funds remaining) to taxes due on the original assessed value of the property; third (to the extent of funds remaining) to any delinquent taxes on increased assessed value from prior tax years; and last (to the extent of funds remaining) to payment of the Developer's share of the tax increment revenues. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

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

Section 6.1. Effective Date and Term.

This Agreement shall remain in full force from the Effective Date hereof and shall expire upon the later of the expiration of the Term or the payment of all amounts due to the Developer hereunder as of expiration of the Term and the performance of all obligations on the part of the City hereunder, unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

Section 6.2. Cancellation and Expiration of Term.

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

**ARTICLE VII
ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

Section 7.1. Consent to Pledge and/or Assignment.

The City hereby acknowledges that the Developer may assign its rights hereunder to a successor owner of the Developer Project and may also from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Developer Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the City hereby consents and agrees to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for financing the Development Program, on one or more occasions during the term hereof. The City 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 City 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. Any obligation of the City under this section shall be conditioned upon pledgee or assignee's or Developer's satisfaction of Developer's obligations under this Agreement. Notwithstanding the foregoing, the City shall not be obligated to make payment to any such assignee or pledgee so long as there is any uncured default on the part of Company hereunder. Developer agrees that any payment by the City made in good

faith to an assignee or pledgee hereunder shall, to the extent of such payment so made, discharge the City's obligation to Developer hereunder.

Section 7.2. Pledge, Assignment or Security Interest.

Except as provided in Section 7.1 hereof for the purpose of securing financing for the Developer Project or an assignment to a successor entity or an affiliate entity, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, through its City Council, which consent shall not be unreasonably withheld.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City 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.

Section 8.2. Parties-in-Interest; No Partnership or Joint Venture.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and 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 City and the Developer. This Agreement is not intended to create any form of partnership or joint venture between the City 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 City; No Waiver of Maine Tort Claims Act.

No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Councilors nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof. Nothing contained herein is intended as a waiver of, and the City expressly reserves all protections and immunities under, the Maine Tort Claims Act, 14 M.R.S.A. § 8101 *et seq.* Developer agrees to indemnify and hold the City harmless from any loss, including court costs and reasonable attorney's fees in the event of litigation, incurred by the City as the result of the City's participation in this Agreement or in the TIF Development Program that is the subject of this Agreement, other than costs and fees incurred in connection with a breach by City of its obligations hereunder.

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; Venue for Suits

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Any suit to construe or enforce the provisions of this Agreement must be brought in the District or Superior Courts of York County, Maine; and otherwise shall be void. Developer expressly waives any claim to jurisdiction of the United States District Court over disputes arising under this Agreement, whether on account of diversity of citizenship or federal subject matter.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given on the third business day after mailing by registered or certified first class mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City Administrator
City of Saco
300 Main St.
Saco, ME 04072

With a copy to:

Director of Planning and Development
City of Saco
300 Main St.
Saco, ME 04072

If to the Developer:

Baxter & Cutts, LLC
22 Monument Square Suite 602
Portland, ME 04101

With a copy to:

Ryan FitzGerald
51 Morning St. Apt. 4
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.

Section 8.8. Amendments.

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

Section 8.9. Benefit of Assignees or Pledges.

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for the Developer Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Developer's right, title and interest herein. No such assignment or pledge shall limit in any way, Developer's obligations hereunder.

Section 8.10. Integration.

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

Section 8.11. 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 file an appropriate action for legal or equitable relief. If the Developer defaults in any of its obligations under this Agreement, the City shall be entitled to recover from Developer its reasonable attorneys' fees incurred in enforcement of such obligations.

Section 8.12. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and the Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) constitute a contractual obligation or binding representation of either party as to such assumptions, estimates, analysis or results; (b) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (c) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

IN WITNESS WHEREOF, the City 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.

CITY OF SACO

By: _____
 Name: _____
 Its: _____

Duly Authorized by the City Council at its meeting on October 21, 2019

BAXTER & CUTTS, LLC

By: _____
 Name: _____
 Its: _____

Duly Authorized

Captured Assessed Value & TIF Revenue Projection Table - City of Saco - Baxter & Cutts - TIF							
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	Captured Valuation @100% of Value Captured	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Municipal Project Account	Captured Revenue to Developer Project Account
1	2020	\$1,000,000	\$1,000,000	0.01959	\$19,587	\$7,835	\$11,752
2	2021	\$1,000,000	\$1,000,000	0.01980	\$19,796	\$7,918	\$11,878
3	2022	\$1,000,000	\$1,000,000	0.02001	\$20,008	\$8,003	\$12,005
4	2023	\$1,000,000	\$1,000,000	0.02022	\$20,221	\$8,089	\$12,133
5	2024	\$1,000,000	\$1,000,000	0.02044	\$20,437	\$8,175	\$12,262
6	2025	\$1,000,000	\$1,000,000	0.02066	\$20,656	\$8,262	\$12,393
7	2026	\$1,000,000	\$1,000,000	0.02088	\$20,876	\$8,350	\$12,526
8	2027	\$1,000,000	\$1,000,000	0.02110	\$21,099	\$8,440	\$12,659
9	2028	\$1,000,000	\$1,000,000	0.02132	\$21,325	\$8,530	\$12,795
10	2029	\$1,000,000	\$1,000,000	0.02155	\$21,552	\$8,621	\$12,931
11	2030	\$1,000,000	\$1,000,000	0.02178	\$21,782	\$8,713	\$13,069
12	2031	\$1,000,000	\$1,000,000	0.02202	\$22,015	\$8,806	\$13,209
13	2032	\$1,000,000	\$1,000,000	0.02225	\$22,250	\$8,900	\$13,350
14	2033	\$1,000,000	\$1,000,000	0.02249	\$22,488	\$8,995	\$13,493
15	2034	\$1,000,000	\$1,000,000	0.02273	\$22,728	\$9,091	\$13,637
16	2035	\$1,000,000	\$1,000,000	0.02297	\$22,971	\$22,971	\$0
17	2036	\$1,000,000	\$1,000,000	0.02322	\$23,216	\$23,216	\$0
18	2037	\$1,000,000	\$1,000,000	0.02346	\$23,464	\$23,464	\$0
19	2038	\$1,000,000	\$1,000,000	0.02371	\$23,715	\$23,715	\$0
20	2039	\$1,000,000	\$1,000,000	0.02397	\$23,968	\$23,968	\$0
20-Year Total		\$20,000,000	\$20,000,000		\$434,155	\$244,062	\$190,093
					Percent of Total	56%	44%
Prepared by Camoin Associates, www.camoinassociates.com							
Financials based on 100% of value captured and 60% of incremental revenues returned to developer for 15 years and 0% in years 16-20.							

D. ADOPTION OF CHAPTER 175 – SENIOR CITIZEN TAX RELIEF ORDINANCE – FIRST READING

The payment of property taxes is a significant challenge for senior citizens who are either retired or working less than regular hours. In order to assist seniors in need, property tax credits are available to qualifying seniors. Due to recent changes in the Senior Citizen Tax Work-Off Program and the addition of a new program (The Senior Tax Assistance Match Program), it was necessary to implement a new ordinance. The City proposes to repeal and replace existing Section 220 of the City Code governing Tax Relief Programs for its Senior Citizens.

This Ordinance would be cited as Chapter 175 – Senior Tax Relief. It will replace in its entirety existing Chapter 220 of the City Code.

Councilor Minthorn moved, Councilor Doyle seconded “The City of Saco hereby approves the first reading of proposed Chapter 175, Senior Tax Relief, and further moves to schedule a public hearing date of October 7, 2019.” The motion passed with seven (7) yeas.

Councilor Minthorn moved, Councilor Doyle seconded “The City of Saco hereby moves to repeal Chapter 220 of the City Ordinances as a part of the possible enactment of new Chapter 175 and moves to schedule a public hearing for consideration of the repeal of said Chapter 220 on October 7, 2019.” The motion passed with seven (7) yeas.

Chapter 175

SENIOR TAX RELIEF

ARTICLE I

Senior Citizen Tax Work-Off Program

- §175-1. Purpose.
- §175-2. Definitions.
- §175-3. Criteria for Participation.
- §175-4. Application and Credit Procedures.
- §175-5. Tax Work-Off Program.

ARTICLE II

Senior Tax Assistance Match Program

- §175-6. Purpose.
- §175-7. Definitions.
- §175-8. Qualifications.
- §175-9. Application and Credit Procedures
- §175-10. Senior Tax Assistance Match Program.

[HISTORY: Adopted by the City Council of the City of Saco on: _____. This ordinance replaces old ordinance Section 220 in its entirety, which was repealed with the enactment of this ordinance]

GENERAL REFERENCES

ARTICLE I

Senior Citizen Tax Work-Off Program

§175-1. Purpose.

The payment of real property taxes is a significant challenge for senior citizens who are either fully retired or working less than regular hours. The purpose of this ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to qualifying persons who are homeowners in the City of Saco. To reduce the burdens of these taxes on these senior citizens, the City establishes the program whereby participants can perform vital municipal services in exchange for a reduction and off set in their real property tax bills.

§ 175-2. Definitions.

For the purposes of this Article, the following terms shall have the following meaning and definition:

HOMESTEAD: For purposes of this Ordinance, "homestead" shall have the similar meaning as defined in 36 M.R.S.A. § 5219-KK (1) (C). Generally, a homestead is a dwelling owned, (not rented), by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be a permanent residence, occupied by that person and that person's dependents as a home.

QUALIFIED PROPERTY: Real property located in and taxable by the City of Saco owned by a qualifying and participating Senior Citizen as their Homestead.

QUALIFYING APPLICANT: A Qualifying Applicant is a person who is determined, after review of a complete application under Section 3 and 4 of this ordinance, to be eligible to participate in the Tax Work-Off program.

QUALIFYING SPOUSE: The legal spouse of a Senior Citizen who is qualified for and participates in the Tax Work-Off Program.

WORK-OFF HOURS: The service time that a participant and their Qualifying Spouse (if applicable) perform. A certain number of hours are required to receive a property tax credit for the participant's real property tax bill for a Qualified Property.

§ 175-3. Criteria for Participation

In order to participate in the Senior Citizen Tax Work-Off Program, an applicant must demonstrate the following:

- a. The Qualifying Applicant shall be at least 65 years of age at the time of application.
- b. The Qualifying Applicant and their Qualifying Spouse (if applicable) shall own a Qualified Property in the City as their homestead at the time of application and for the past three years.
- c. The Qualifying Applicant's household income cannot exceed the average Low-Income Limits (80%) for York County as published by the Federal Department of Housing and Urban Development.
- d. The Qualifying Applicant shall meet the application and eligibility criteria set forth in **§ 175-4 of this article.**

§ 175-4. Application and Credit procedures

Persons seeking to participate in the Tax Work-Off Program shall submit an application to the Program administrator no later than April 1. Applications are required for every year the applicant seeks to participate in this program. The application form for the program shall be made available upon request and shall include at minimum, the applicant's name, homestead address, and contact information. Attached to all applications shall be proof of household income.

The City of Saco will establish the amount of property tax credit that will be provided to participants based on the number of service hours performed by the participant and their Qualifying Spouse (if applicable).

This will only be applied as a property tax credit against real property taxes for a Qualifying Property; no direct wages will be paid to any party. In no case shall the City's Tax Work-Off property tax credit exceed the property taxes assessed on any participant. Only one Tax Work-Off property tax credit per household is allowed.

In no event will any party be able to exceed the maximum off-set credits established under the City's existing policy then in effect; any additional service hours are not applied to this program and will not result in any additional tax credit.

Participants will receive an IRS Form 1099, and they are responsible for all federal and state tax reporting of property tax credit benefits that accrue to them from the program. Participants will receive a W-2 form from the city to assist with tax planning purposes.

§175-5. Tax Work-Off Program.

The City's Tax Work-Off Program shall be administered by a designee of the Human Resources Director and shall be governed by the ordinance established by the City Council. These policies may be amended from time to time.

The City does not guarantee, assure or promise acceptance into the Tax Work-Off Program for any party, and acceptance is not a promise or guarantee of any minimum number of service hours, or of off-set credits that can be earned.

A participant in the City's Senior Tax Assistance Match Program (Article II) may not apply for or participate in this Tax Work-Off Program.

On or about May 1, the City Council will re-evaluate the program and determine the funding to be drawn from the tax commitment overlay for the ensuing fiscal year.

ARTICLE II

Senior Tax Assistance Match Program

§175-6. Purpose.

The purpose of this ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to qualifying persons who are homeowners in the City of Saco. For those eligible, the State of Maine refunds to the citizen a portion of funds paid as local property tax. The City intends, by this Ordinance, to offer a partial matching credit to those individuals who qualify as homeowner beneficiaries of the State of Maine Residents Property Tax Fairness Credit pursuant to Chapter 822 of Title 36 of the Maine Revised Statutes, as may be amended from time to time and who meet the criteria established by this Ordinance.

§175-7. Definitions.

HOMESTEAD: For purposes of this Ordinance, "homestead" shall have the similar meaning as defined in 36 M.R.S. § 5219-KK (1)(C), i.e. a dwelling owned by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person.

HOMESTEAD EXEMPTION: The State of Maine property tax exemption for all individuals who have owned a permanent residence in Maine for twelve (12) months as of April 1. Established by the State of Maine pursuant to 36 M.R.S.A. §683, as may be amended from time to time.

SENIOR TAX ASSISTANCE MATCH PROGRAM: The program established by the City of Saco under this Ordinance, also referred to as the "Senior Tax Match Program."

SENIOR TAX ASSISTANCE MATCH FUND: The special revenue fund established by the City of Saco under this Ordinance, also referred to as the "Senior Tax Match Fund."

QUALIFYING SENIOR CITIZEN: A resident of the City of Saco, age 70 or older, as of April 1 of the calendar year in which they first seek to participate in the Senior Tax Match Program.

STATE PROPERTY TAX FAIRNESS CREDIT PROGRAM: The program established by the State of Maine pursuant to 36 M.R.S.A. §5219-KK as may be amended from time to time.

§175-8. Qualifications.

To qualify for participation in the Senior Tax Assistance Match Program, an applicant must demonstrate all of the following:

- a. The applicant must be the owner of record and reside, full time in the dwelling for the past 10 years continuously.
- b. Applicant shall be 70 years or older on or before April 1 of the program year.
- c. The applicant has applied for and received the Homestead Exemption for the year in which the rebate is requested.
- d. The applicant has received a tax refund under the provisions of the State of Maine Residents Property Tax Fairness Credit Program (36 M.R.S.A. 5219-KK).
- e. The applicant has paid property taxes in full for the year in which the refund is requested.

§175-9. Application and Credit Procedures.

Applications are required every year to participate in the Senior Tax Match Program. The program administrator will provide an application form for the program, which shall include, at a minimum, the applicants name, homestead address, and contact information. As part of the application to the City, the applicant shall authorize the City to seek documentation from Maine Revenue Services of the proof and dollar amount of State Property Tax Fairness Credit received by applicant.

The program administrator determines if applicants are eligible to participate in the program and the administrator shall determine the total amount of such eligibility. Eligibility shall be the lesser of the following amounts, but in no case shall the City's offered tax credit exceed the property taxes assessed and paid less the State Property Tax Fairness Credit:

- a. The amount of credit qualified for under the State Property Tax Fairness Credit program.
- b. A pro rata share of the available monies in the Matching Fund based on the amount of one's State Property Tax Fairness Credit; or
- c. A property tax credit of \$500.

The Program Administrator shall report to the City Council each year the projected amount of property tax credits and the number of Qualifying Senior Citizens requesting assistance from the Tax Assistance Match Fund. The City Council shall annually determine the number of recipients in the program.

§175-10. Senior Tax Assistance Match Program.

The City's Senior Tax Assistance Match Program shall be administered by a designee of the Human Resources Director and shall be governed by policies established by the City Council. These policies may be amended from time to time.

If a Qualifying Senior Citizen applies and meets those conditions and requirements set out in the Senior Tax Match Program's policies, they are eligible to receive a tax credit applied by the City as an off-set against their real property taxes.

A participant in the City's Tax Work-Off Program (Article 1) may not participate in or apply for the Senior Tax Assistance Match Program.

On or about May 1, the City Council will re-evaluate the program and determine the funding to be drawn from the tax commitment overlay for the ensuing fiscal year.

E. SET DATES FOR ZONING ORDINANCE REVISION MEETINGS AND EXPECTATION FOR DRAFT # 3

On February 20, 2018, the City Council voted to adopt the 2018 update of Saco's Comprehensive Plan. The 2018 Comp. Plan update was the result of two years of review and discussion by an adhoc committee and City Staff. As a community, our next step is to update the Zoning Ordinances to align with the City of Saco's land use vision: The most forward-thinking land use policies in the State of Maine that ensure financial stability, environmental sustainability, and provides opportunities and accessibility to all.

The City Council voted to establish a Zoning Ordinance Revision (ZOR) Steering Committee on October 15, 2018. After a competitive RFP Process, the City of Saco contracted with planning consultants TZM Planning and EF | Design & Planning, LLC (Consultants) to update Saco's Zoning Ordinance (ZO) in the Fall of 2018. In January 2019, the City and the consultants initiated an online survey of Saco residents and property owners soliciting input on zoning-related topics that warranted further discussion by stakeholders. A total of 1,080 people participated in the survey. A public Charrette was held on February 7 at the PeoplesChoice Credit Union, and over 70 Saco residents participated.

Based on the public input and the feedback and direction from the Steering Committee, City Council, Planning Board, Historic Preservation Commission, Conservation Commission, other City boards and committees, and City Staff from all departments, Draft 2 of the land use ordinances were completed in and posted online [here](#) in late August.

The ZOR Steering Committee and the Planning Board have held individual work sessions, as well as a joint work session, to review these Draft 2 documents, and the City Council held a workshop on this topic on Monday September 9, 2019. The City also hosted two public forums on Tuesday, September 10th and Wednesday, September 11th. About a dozen residents attended each open-house style meeting and provided valuable input to the process. Feedback from these forums and City boards and committees will be compiled and integrated into a final draft, which will then go through a formal public hearing and adoption process with the Planning Board and City Council. The Project Completion Timeline, revised as of 9/11/19 (Exhibit 1), outlines the anticipated schedule for adoption of the ordinance revisions as well as other key dates in the process, including public hearing for the Planning Board and Historic Preservation Board on Tuesday, October 22nd, and the City Council Public Hearing on Monday, November 4th.

To help ensure extensive notification and participation for the final stages of this multi-year effort, staff intends to mail a letter to all property owners in the City providing project background and the dates and times of the three upcoming public hearings. This letter goes beyond state and local notification requirements, which is appropriate for such a significant project. In order to meet legal requirements and provide timely notice of these meetings to the public, staff is requesting the council approve this timeline tonight so City staff is can move forward with printing and mailing the letter, which will be sent by Tuesday, October 8th.

Councilor Johnston moved, Councilor Doyle seconded to approve the Project Completion Timeline for this project, including the City Council First Reading on October 21, 2019; Public Hearings with the Historic Preservation Commission and Planning Board on October 22, 2019; City Council Public Hearing on November 4, 2019; and City Council Second and Final Reading and Vote on November 18, 2019. The motion passed with seven (7) yeas.

Zoning Ordinance Revision – Project Completion Timeline
(tentative – subject to Consultants’ availability and City Council meeting schedule)
July – November 2019 (as of 09.11.09)

Date	ZOR Project	Deliverable	Staff Lead/Team
Tuesday, July 23	Zoning Ordinance Draft 1	Staff comments due	Emily Cole-Prescott
Friday, July 26	Zoning Ordinance Draft 1	Council, Steering, EDC comments due	Denise Clavette
	Zoning Ordinance Draft 1	Planning Board, Cons. Com. comments due	Emily Cole-Prescott
July 29 – August 2	Zoning Ordinance Draft 1	Consolidated review and recommendations	D. Clavette, E. Cole Prescott, J. Berna
Friday, August 2	Zoning Ordinance Changes	Due to ZOR Consultants	Emily Cole-Prescott
Friday, August 16	Zoning Ordinance Draft 2	Draft 2 sent to City (D. Clavette)	Liz Durfee, Tom Morgan
Wednesday, Aug. 21	Zoning Ordinance Draft 2	Draft 2 to CC, PB, Comm., online	D. Clavette, J. Berna
Aug. 25 – Sept. 12	Z. Ord. Outreach Campaign	Educational videos, survey, etc.	Emily Roy
Wed., August 28	Zoning Ordinance Draft 2	Zoning Ord. Steer. Comm. Meeting 5:00 – 7:00 PM	D. Clavette, E. Cole-Prescott, J. Berna
Tues., September 3	Zoning Ordinance Draft 2	Planning Board Workshop	D. Clavette, E. Cole-Prescott, J. Berna
Mon., September 9	Zoning Ordinance Draft 2	Joint Planning Board & Steering Committee 5:00 – 7:00 PM	N. Schuster, L. Durfee, T. Morgan, E. Cole-Prescott
	Zoning Ordinance Draft 2	City Council workshop 7:00 – 8:00 PM	D. Clavette, L. Durfee, T. Morgan E. Cole Prescott
Tues., September 10	Zoning Ord. Public Forum	Public Input on Zoning Ord. Draft 2	L. Durfee, T. Morgan
Wed., September 11	Zoning Ord. Public Forum	Public Input on Zoning Ord. Draft 2	L. Durfee, T. Morgan
Friday, Sept. 20	Zoning Ord. Final Draft	Complete Zoning Ord. Final Draft	L. Durfee, T. Morgan
Friday, Sept. 27	Zoning Ordinance Draft	Zoning Ord. Final Draft to CC & Comm.	D. Clavette, J. Berna
Monday, Oct. 7	Draft Ordinances	City Council Meeting/Council Refers Draft Zoning, Site Plan and Subdivision Ordinances to Planning Board & HPC for Public Hearing and Report	D. Clavette, J. Berna
		City Council Workshop (after CC Meeting) Update on changes	L. Durfee, T. Morgan, D. Clavette, J. Berna
Tuesday, Oct. 8	First Notice	Published notice of Planning Board & HPC public hearings on Ordinances’ amendments with proposed new zoning map appears in newspaper of general circulation, and same notice is posted in City Hall and is mailed to all property owners.	D. Clavette, J. Berna
Tuesday, Oct. 15	Second Notice	Published notice of Planning Board & HPC public hearings on Ordinances’ amendments with proposed new zoning map appears in newspaper of general circulation.	D. Clavette, J. Berna

Monday, Oct. 21	Ordinances	City Council First Reading	D. Clavette, E. Cole-Prescott
	First Notice	Published notice of City Council public hearing on Draft Zoning, Site Plan and Subdivision Ordinances' amendments with proposed new zoning map appears in newspaper of general circulation, and same notice is posted in City Hall and is mailed to all property owners.	D. Clavette, E. Cole-Prescott
Tuesday, Oct. 22	Ordinances	HPC Public Hearing Planning Board Public Hearing	E. Cole-Prescott E. Cole-Prescott
Monday, Oct. 28	Second Notice	Published notice of City Council public hearing on Draft Zoning, Site Plan and Subdivision Ordinances' amendments with proposed new zoning map appears in newspaper of general circulation.	D. Clavette, E. Cole-Prescott
Tuesday, Oct. 29	Ordinances	Planning Board & HPC Adoption of Report To City Council on Draft Zoning, Site Plan and Subdivision Ordinances' amendments	E. Cole-Prescott
Monday, Nov. 4	Ordinances	City Council Public Hearing/ Planning Board & HPC Reports submitted City Council	L. Durfee, T. Morgan, D. Clavette, E. Cole-Prescott J. Berna, N. Schuster
Monday, Nov. 18	Ordinances	City Council Second and Final reading/ Vote to Adopt Zoning, Site Plan and Subdivision Ordinances	L. Durfee, T. Morgan, D. Clavette, J. Berna, E. Cole-Prescott

VII. ADMINISTRATIVE UPDATE

City Administrator Kevin Sutherland provided the following administrative update:

- Zoning Ordinance Revision - Thank you for the support in that timeline. I was really hopeful this council would be the final vote seeing how you have been involved in basically every step of the Zoning Ordinance update process. I think it is fitting for this council to have that final vote on and see Saco's future that meeting before the council changes.
- Budget Workbook – That will be on the website tomorrow. Once the council approved the budget in May we put up a line item version that we were able to print right out of Munis but it is not very user friendly. So, unfortunately our Finance Director had some scheduled time away and now she is starting to put in a few hours and was able to finish this project for us. We intend to submit the public friendly version to the Government Finance Officers Association Distinguished Budget Presentation Award in the coming days.
- Streaming Meetings and Council Recap Videos -

Earlier this month, we switched our streaming system from a third-party vendor to in-house production. An independent streaming device addresses security concerns, improves the quality of the video output, and creates the potential for additional streaming capabilities. It also improves the digital user's experience and ability to follow along with the agenda and discussion topics.

Andrew Dickinson, Saco's Communications Coordinator, met with Kris Stryker of the School Department today to review how to use this new streaming device. We have the ability to stream both the City Council Meeting and School Board Meetings this week as well as future meetings. Andrew has added some of these new features to the meeting tonight. When you visit our website, you will see Facebook Live, SacoTV (TATV), and You Tube as the different ways to watch City Council meetings.

As you are aware, we posted a Council Meeting Recap video earlier this month. The purpose of the City Council Meeting Recap videos is to make sure constituents are aware of the topics discussed during the meetings. We have many community members who watch the meetings live, and we hope even more community members will watch the meetings with our improved streaming capabilities. The audience we are targeting with the recaps is those community members who are not currently streaming or viewing the meetings.

Based on the feedback we have received, we will adjust these recaps to be a brief text summary that includes timestamp references to the full meeting video, instead of creating a separate video. By adding timestamps, we intend to have people refer to the original video on You Tube to watch the entire discussion for a specific topic of interest. We aim to make the meetings as easy for people to

follow along as possible, but we do not want to deter people from watching the full discussion surrounding each decision.

Our goal is to ensure people feel informed. If we can increase engagement among a portion of the population that isn't watching the full meetings, then it is worthwhile. The timestamps on the original video will still accomplish this goal and we are comfortable moving in that direction. We are happy to attend a future workshop if you'd like to discuss this further.

- Police Department Reorganization – With the appointment of our new Police Chief Jack Clements has decided to make a slight reorg to the administrative level of the department. This reorganization has no impact on the budget or current staffing levels and will provide some career ladder opportunities as well as strengthen our succession and planning goals. In addition, we will be coming to council next month for support of 2 more police officers.
- Joint School Board Meeting – September joint school board and city council meeting was mentioned at the beginning of this council meeting that we will have a meeting on Wednesday, September 25th at the with the school board changes to the Saco City Charter were approved at the ballot box last November and took effect July 1st. So, in those changes the council has moved forward with language in section 6.02 Submissions of budgets and the city council and school board shall meet in joint session in September and December. That is our first order based on the new charter language.
- Maine Clerk of the Year – Last Tuesday, Maine Town and City Clerk Association held their annual meeting in which Michele Hughes, Sac's City Clerk was awarded the 2019 Municipal Clerk of the Year. This award is the highest honor given by the Maine Town and City Clerk's Association and recognizes excellence in both Michele's service to the community and to the profession of municipal clerk. Michele has worked for the Saco City Clerk's Office since 1989 as Assistant and Deputy, and since 2011 as City Clerk. In her 30 years with the city Michele has helped countless citizens whether they needed a particular license, vital record or to cast a ballot. She is highly respected by all city staff and has a deep well of knowledge that can only begin through the decades of service to the community. Please join me in congratulating her incredible accomplishment. Her city plaque is now hanging in the City Hall right next to Dick Lambert's Code Enforcement of the year from 2010. Thank you, Michele, for all you do for the City of Saco.
- Mayor Lovell – Where on the website do you connect to the video? I stand corrected of course that we no longer use Town Hall Streams. Councilor Copeland and Kevin Sutherland noted it is under City Council meetings.

IX. COUNCIL DISCUSSION AND COMMENT

- Councilor Minthorn – I had a couple of text messages since we had our discussion regarding the appeal that some of us may have seemed a little indifferent to the safety of the children in stating that there were no children impacted by what was going on at Toddle Inn. We are incredibly sensitive to the safety of the children. I think the point that was made s that there were a few school staff in potential to harms way with the conditions that were found in the building. If it wasn't for the foresight of our Code Enforcement Officer and Electrical Inspector there was a great potential there for children to be harmed. Now, I think the bigger issue in my mind is the fact that up until the end of May and June there were actually children in this building that were potentially in harms way and by the grace of god nothing happened. It certainly could have turned out much worse and much differently for the owners of Toddle Inn. I don't think anyone sitting up here isn't very cognizant of that fact knowing we have councilors that have children in Toddle Inn as well as the fact that the potential for life safety has never been taken lightly by this council in the 4 years that I have been sitting here. Thank you.
- City Administrator Kevin Sutherland- Andrew Dickinson who is recording the meeting upstairs sent me a quick email and said sacomaine.org/watchmeetings. There is allot of information about how you can learn about what is going on.

X. ADJOURNMENT

Councilor Gay moved, Councilor Smart seconded to adjourn the meeting at 9:21 p.m. The motion passed with seven (7) yeas.

Attest: _____
Michele L. Hughes, City Clerk