

REPORT OF THE  
GORHAM TOWN COUNCIL  
REGULAR MEETING VIA ZOOM  
May 5, 2020

Chairperson Phillips opened the meeting with the Pledge of Allegiance to the Flag. There were 9 members of the public in attendance via zoom.

Roll Call: Chairperson Phillips, Councilors Shepard, Hartwell, Hager, Pratt, Kuech and Wilder Cross. Also in attendance were Town Manager Ephrem Paraschak, Director of Community Development Tom Poirier, and Town Clerk Laurie Nordfors.

Moved by Councilor Wilder Cross, seconded by Councilor Shepard and VOTED to accept the minutes of the April 7, 2020 Regular Town Council Meeting and the April 30, 2020 Special Town Council Meeting.  
**7 yeas**

### **Open Public Communications**

Renee Murray, Settlers Way, had questions on the correct protocol for creating access to public spaces in the Fort Hill Neighborhood. She would like guidance from the Council on this process.

### **Councilor Communications**

Councilor Pratt reported that the Industrial Park Steering Committee met on April 15<sup>th</sup> and he was nominated as Chair. They discussed surveying wetlands, woodland studies and goals and are waiting for results. They will meet again in early June and move forward.

Councilor Shepard reported that the Ordinance Committee met on April 21<sup>st</sup> and discussed four different items which will be coming back for further review. The next meeting will be held on May 19<sup>th</sup>.

Councilor Hartwell clarified that the Town is now issuing burning permits, weather permitting. He also discussed the meeting that he and Councilor Pratt had with the Town Manager, Director of Community Development and a member representing the Planning Board about improving the planning process. They have reached out to other Towns that have had a positive planning process in their Town. He also expressed that we are experiencing a whole new world around us and people and businesses are struggling during this time. He suggested businesses reach out to get the necessary resources available. One point of contact that is available is our Economic Development Director Kevin Jensen. He is able to point people in the right direction to get help.

Councilor Wilder Cross attended the monthly Gorham Village Alliance meeting that works in collaboration with the Gorham Business Exchange and the Gorham Economic Development Corporations. They discussed how to work together to help small businesses around Town. She urged small businesses to visit the website **GorhamStrong.org** for valuable information and financial resources that are available, including grants or low interest loans for their business along with other programs. The website also includes information on a program called **Split the Tab**, which allows a person to buy a \$20 gift certificate to a local business for \$10. She reported that businesses are beginning to open with strict guidelines to providing a safe way to do business and also some restaurants in Town are offering "take-out", including GHOP, Mr. Bagel, Beal's Ice-cream, Ocean Gardens and Junction Bowl to name a few. She recommends calling local businesses in Gorham to see which ones are open and what restrictions they have in place. Councilor Wilder Cross reported that the Gorham Village Alliance has

ordered a picnic table, bench and trash receptacle to begin creating a park next to Robie Gym. She also disclosed that later this month, she will attend the Greater Portland Coalition of Governments annual summit where the focus will be on the regional response to economic recovery following the COVID virus. The summit will also address the future of the region's transportation.

Councilor Kuech added that a few more businesses in Gorham, including The Bookworm and Carter's Green Market are also doing phone or Facebook message orders and encouraged citizens to reach out to them for personal service.

Chairperson Phillips remarked that she believes that people are doing a fairly decent job keeping the many recreational trails in Gorham clean and welcoming. She also reported that she has been on a variety of zoom meetings with other officials around the State on how they are handling the budget process during these trying times

Councilor Hartwell added that he had received an inquiry about the clear cutting by Shaw Park. He reported that he downloaded the deed that was transferred to the Town of Gorham and found that there is a covenant in that deed that allows for future land clearing and expansion. The Town will be putting up a sign stating this agreement.

### **Town Manager Report**

Town Manager Paraschak announced that the due date for the 2<sup>nd</sup> half of the 2020 Real Estate and Personal Property taxes has been extended until June 15<sup>th</sup>. You may pay your taxes through the mail, over the phone or online with a credit card, or drop it off in the book drop at the library. He reminded citizens that all Municipal departments are 100% functional and are operating remotely from home or in the office when needed. He reported that Town departments are currently working on plans for transitioning to soft openings in the month of June depending on the CDC and the Governors guidelines. He also reported that youth summer rec camps are on schedule to open this summer but will depend on the Governors recommendations. Public Works is working on the cross town trail and making improvements. The hope is to get it connected to the Shaw Brothers Cherry Hill trail soon. He reported that the 1<sup>st</sup> Town Budget Workshop will be Thursday May 7<sup>th</sup> at 5:30pm. Town Manager Paraschak thanked all Town Employees for their hard work over the last few months transitioning to remote working and keeping the Town running smoothly during the current pandemic.

### **School Committee Report**

Chairman McCallister reported the following:

1. The District Leadership team has recently announced its end of the year plans for the school year via distance learning. The plans are broken out by grade levels below:
  - a. GHS Seniors' last day of formal learning will be similar to what was originally planned with May 15th being the last day of new learning. Seniors will then spend the following two weeks participating in internships, enrichment activities, or intervention activities to ensure all requirements are met for them to receive a diploma. The first week in June for seniors will be spent in preparation for graduation exercises. This year's graduation exercises will be held, but very differently than in the past. Full details regarding GHS graduation plans will be reported to the School Committee on May 13th and then released to the public.

- b. GHS students in grades 9-11 will end "new learning" on June 1. Between June 1 - 12 teachers will pivot their focus to working with students to provide enrichment opportunities and intervention services for those students who may be in jeopardy of not meeting standards and therefore of not receiving credits. Additionally, time will be spent working with students to help them transition into the next school year. June 15 and 16 will be spent ensuring students have picked up their personal belongings and in making sure those students who may need support over the course of the summer have specific plans to receive those supports.
  - c. Students in grades K-8 will end "new learning" on June 5. June 8-12 teachers will pivot their focus to working with students to provide enrichment opportunities and intervention services to those students who may need it. Additionally, significant time will be spent working with students to help transition students into the next school year. June 15 and 16 will be spent in specific preparation of schools closing and in making sure that those students who may need support over the course of the summer have specific plans to receive those supports.
2. Thanks to the hard work and dedication of our very own Technology Director, Dennis Crowe, we have been able to procure laptops for all students in grades K-3 from the Maine Department of Education FOR FREE. These chrome books will be distributed between May 11 and May 22 to all students in grades K-3. Having these laptops for the last few weeks of our "normal" school calendar will help to ensure all students have equal access to successfully being able to close out this year and transition to the coming year. We will also be allowing all families in current grades K-11 to keep their laptops over the summer so that they will have easier access to any online summer learning opportunities that may be needed to assist them in their learning. Thank you to Dennis and the MDOE team for their incredible work on this project and in procuring these much needed devices for our youngest learners!
  3. The Gorham District Leadership Team will be reporting to the School Committee on May 13<sup>th</sup> their specific and detailed plans for how to transition students into the coming school year via distance. These will include specific focus on how to transition new incoming kindergarten students, students who are having to change schools due to shifts in attendance zones, students who are moving from our elementary schools to GMS and students who are moving from GMS to GHS. Additionally, specific details on plans for GMS 8th grade recognition night and GHS graduation will be shared. Once presented to the School Committee, these plans will be posted for the public via the Superintendent's Blog.
  4. Given the Governor's recent announcement, the Gorham Schools will continue to provide distance learning programming through the end of the school year. The last formal day of school this year will be June 16, 2020. All buildings will remain closed to the public through June 16. All athletic fields and playgrounds will remain closed until the Town of Gorham adjusts its plans. Right now the only facility that is open to the public is our track. Thank you to the Gorham PD for posting their electronic sign there letting folks know it is open and reminding them to maintain their social distancing.

5. We are currently working diligently to make plans for what summer programming might look like and what the opening of the next school year might look like. Draft plans are being reviewed by District Leadership teams, medical advisory groups, and others. The plan will be presented to the Gorham School Committee at their June 10th regular meeting.
6. We look forward to our budget presentation meeting with all of you scheduled for May 12 at 6:30p.m. via zoom. A reminder that if the town council has questions, please use the shared google doc to ask them. If you post your questions there by Friday, May 8 so we can prepare to include the answers in our presentation. If folks are having difficulty accessing the shared google doc, please email [heather.perry@gorhamschools.org](mailto:heather.perry@gorhamschools.org).
7. Our next School Committee regular meeting is scheduled for May 13, 2020. It will be a virtual meeting held online beginning at 7pm. The link to join the meeting will be included on our next agenda. You will also be able to view the meeting on GOCAT.

**Order #20-050**

Moved by Councilor Hager, seconded by Councilor Pratt and Ordered, that the Town Council authorize the Town Clerk to issue the warrant for the July 14, 2020 School Budget Validation Election; and

Be It Further Ordered, that the polls be open from 7:00am until 8:00pm; and

Be It Further Ordered, that the Town Council appoints the following persons for the designated voting districts and if any of the following should fail to serve, the Town Council hereby authorizes the Town Clerk to appoint substitutes:

District 1-1 – Susan Emerson, Warden and Laurel Smith, Ward Clerk  
District 1-2 – Katherine Corbett, Warden and Cornelia Loughran, Ward Clerk  
District 2 – Martha Towle, Warden and Nancy Kenty, Ward Clerk  
Central – Paula Nystrom, Warden and Nanette Belanger, Ward Clerk

Be It Further Ordered, that the Registrar of Voters be in session during the hours of 8:00am and 4:00pm on Tuesday, July 7 and Wednesday, July 8; between the hours of 8:00am and 6:30pm on Thursday July 9, between the hours of 8:00am and 1:00pm on Friday July 10 and between the hours of 8:00am and 4:00pm on Monday July 13, 2020, and

Be it Further Ordered, that the Town Clerk be authorized to process absentee ballots on Friday, July 10, Saturday, July 11, Sunday, July 12 and Monday, July 13 at 10:00am and 2:00pm and Tuesday, July 14, 2020 at 10:00am, 2:00pm and 8:00pm. **7 yeas**

**The Town Manager highly recommends that people absentee vote for this election due to the current health pandemic in the US. You can obtain an absentee ballot online or by calling the Town Clerk's Office.**

- Order #20-051** Moved by Councilor Hager, seconded by Councilor Shepard and Ordered, that the Town Council send to the Planning Board, for public hearing and their recommendation, proposed amendments to the Contract Zone of Gorham Savings Bank to allow for a solar facility and/or solar panel installation on their building. **7 yeas**
- Order #20-052** Moved by Councilor Shepard, seconded by Councilor Wilder Cross and Ordered, that the Town Council amend the policy of the revolving loan fund to allow for small financing requests to be increased from \$10,000 to \$25,000 and;
- Be It Further Ordered, that the maximum loan amount stated in the RLF Procedures document that does not maintain a financial leveraging requirement be increased from \$10,000 to \$25,000. **7 yeas**
- Order #20-053** Moved by Councilor Kuech, seconded by Councilor Shepard and Ordered, that the Town Council authorize the Town of Gorham (Police) to rejoin the Maine Public Employees Retirement System as a Participating Local District effective July 1, 2020, and;
- Be It Further Ordered:
- a.) To offer Special Plan 3C to its regular, full-time police officers who work at least 40 hours per week;
  - b.) To authorize Ephrem Paraschak, *Town Manager* to sign the Amended Agreement between the Town and Maine Public Employees Retirement System;
  - c.) To exclude all other employees from participating in MainePERS;
  - d.) To allow its eligible police officers who are currently employed by the Town on July 1, 2020 and who elect to join MainePERS, to purchase past service upon the employee's full payment of all associated costs. The Town of Gorham will not participate in the purchase of past service and so employees are responsible for paying the full liability associated with this service. **6 yeas, 1 nay (Hartwell)**
- Order #20-054** Moved by Councilor Hager, seconded by Councilor Pratt and Ordered, that the Town Council authorize the Town Manager to enter into a Collective Bargaining Agreement Extension with the Gorham Professional Firefighters Association, Teamsters Local 340 through June 30, 2020, subject to the terms of the Extension of Collective Bargaining Agreement attached to this order and incorporated herein by reference. **6 yeas, 1 nay (Hartwell)**

**Order #20-055** Moved by Councilor Hager, seconded by Councilor Hartwell and Ordered, that the Town Council authorize staff to submit a request for proposals to qualified vendors for solar facilities at the new Gorham Industrial / Business Park located between Main Street and New Portland Road. **7 yeas**

**Order # 20-056** Moved by Councilor Hager, seconded by Councilor Shepard and Ordered, that the Town Council hereby amends the residential construction fee schedule to no longer charge a fee for the installation of handicap ramps on residential properties. **7 yeas**

**Moved by Councilor Hager, seconded by Councilor Shepard and VOTED to waive the reading of Order #20-057 due to length. 7 yeas**

**Councilor Pratt asked to recuse himself from the following discussion and vote of Order #20-057 due to a conflict of interest.**

**Order #20-057** Moved by Councilor Hager, seconded by Councilor Wilder Cross and Ordered, that the Town Council authorize the Town Manager to enter into an Amended and Restated Credit Enhancement Agreement between the Town of Gorham, Maine and ODAT Realty Holdings, Inc. as follows:

**AMENDED AND RESTATED  
CREDIT ENHANCEMENT AGREEMENT  
Between the TOWN OF GORHAM, MAINE and ODAT REALTY HOLDINGS, INC.**

**THIS CREDIT ENHANCEMENT AGREEMENT** dated as of May 5, 2020, between the Town of Gorham, Maine (the Town), a municipal body corporate and politic and a political subdivision of the State of Maine, and ODAT Realty Holdings, Inc. (the “Developer”), a Maine corporation with a place of business in Gorham, Maine.

**WITNESSETH THAT**

**WHEREAS**, the Town designated the ODAT Realty Holdings, Inc. Municipal Development and Tax Increment Financing District (the “District”) pursuant to Chapter 207 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Town Council at a Town Council Meeting held August 5, 2003 (the “Vote”) and pursuant to the same Vote adopted a development program and financial plan for the District (the “Development Program”); and

**WHEREAS**, the Maine Department of Economic and Community Development (the “Department”) reviewed and accepted the District and the Development Program effective March 30, 2004; and

**WHEREAS**, the Development Program contemplated the execution and delivery of a credit enhancement agreement between the Town and the Developer, and the Town and the Developer executed such a credit enhancement agreement dated March 31, 2004 (the “Original Agreement”); and

**WHEREAS**, the Town adopted the First Amendment to the Town of Gorham ODAT and Grondin Industrial Park Tax Increment Financing District and Development Program #2 (the “First Amendment”) by action of the Town Council at a Town Council Meeting held April 2, 2019, which First Amendment was reviewed and approved by the Department by letter dated December 4, 2019; and

**WHEREAS**, the First Amendment authorized the extension of the District for an additional fifteen (15) years through June 30, 2034, and authorized the Council to enter into additional agreements with Developers in the District for the remainder of the District term; and

**WHEREAS**, on May 5, 2020, the Council authorized the extension of the Original Agreement for a term of fifteen years from June 30, 2019 through June 30, 2034;

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual promises and covenants set further 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:

“Agreement” shall mean this Credit Enhancement Agreement between the Town and the Developer dated as of May 5, 2020.

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

“Developer Land” means the land located in the District owned by the Developer, more particularly described as Lot 33-016 on Tax Map 12, and in deed from Rich Tool & Die Company, to ODAT Realty Holdings, Inc., recorded in the Cumberland County Registry of Deeds in Book 15798, Page 137.

“Development Program” shall have the meaning given such term in the recitals hereto, and shall include any amendments thereto as referenced herein.

“Development Program Fund” means the development program fund described in the Financial Plan section of the Development Program and established and maintained pursuant to Article II hereof.

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

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

“Original Assessed Value” means the assessed value of the Developer Land in the District as of March 31, 2004, which value has been certified by the Town’s Assessor to be \$172,900.

“Project” means the design, planning, development, and continuation of a 21,275 square foot industrial building by the Developer on the Developer’s Land in the District as described in the Development Program.

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

“Retained Tax Increment Revenues” means that portion of incremental property tax revenues attributable to the Project to be located on the Developer Land in the District to be retained by the Town pursuant to the terms of the Development Program.

“Tax Payment Date” means the date(s) on which property taxes levied by the Town are due and payable from owners of property located within the Town.

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

“Town Project Cost Subaccount” means the project cost subaccount in the project cost account of the Development Program Fund for the Project as described in the Financial Plan Section of the Development Program and established and maintained pursuant to Article II hereof.

“Town Tax Increment Revenues” means that portion of the Retained Tax Increment Revenues to be deposited by the Town into the Town Project Cost Subaccount pursuant to the allocation schedule contained in Section 3.2 hereof.

“ODAT Realty Holdings, Inc. Project Cost Subaccount” means the project cost subaccount in the project cost account of the Development Program Fund for the Project as described in the Financial Plan Section of the Development Program and established and maintained pursuant to Article II hereof.

“ODAT Realty Holdings, Inc. Tax Increment Revenues” means that portion of the Retained Tax Increment Revenues to be deposited by the Town into the ODAT Realty Holdings, Inc. Project Cost Subaccount pursuant to the allocation schedule contained in Section 3.2 hereof.

## **Section 1.2. Interpretation and Construction.**

In this Agreement, unless the context otherwise requires:

The terms “hereby”, “hereof”, “hereto,” “herein”, “hereunder” and 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.

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.



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

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.

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

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

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**

### **PROJECT COST ACCOUNT AND FUNDING REQUIREMENTS**

#### **Section 2.1. Creation of Development Program Fund and Project Cost Subaccount**

The Town hereby confirms the creation and establishment of a segregated fund in the name of the Town designated as the “ODAT/Grondin Municipal Development and Tax Increment Financing District Development Program Fund” pursuant to, and in accordance with the terms and conditions of, the Development Program (referred to as the “Development Program Fund”). The Town hereby confirms the creation and establishment of a segregated Project Cost Account in the name of the Town which consists of two subaccounts designated as the “ODAT/Grondin Municipal Development and Tax Increment Financing District ODAT Realty Holdings, Inc. Project Cost Subaccount” and the “ODAT/Grondin Municipal Development and Tax Increment Financing District Town Project Cost Subaccount” pursuant to, and in accordance with the terms and conditions of, the Development Program (referred to herein as the “ODAT Realty Holdings, Inc. Project Cost Subaccount” and the “Town Project Cost Subaccount,” respectively).

#### **Section 2.2. Deposits into the ODAT Realty Holdings, Inc. Project Cost Subaccount of the Development Program Fund.**

There shall be deposited by the Town into the ODAT Realty Holdings, Inc. Project Cost Subaccount contemporaneously with each payment of property tax by Developer during the term of the District an amount equal to that portion thereof constituting ODAT Realty Holdings, Inc. Retained Tax Increment Revenues; provided, however, that no such deposit shall be made unless and until the Developer shall have in fact paid to the Town all taxes due on the Developer Land and the Project and provided further that any such deposit to the ODAT Realty Holdings, Inc. Project Cost Subaccount shall be due and payable solely from such tax payments. Any and all revenues resulting from investment of monies on deposit in the ODAT Realty Holdings, Inc. Project Cost Subaccount shall be paid to the Developer.

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

Monies deposited in the Development Program Fund shall be used and applied first to fund the Town's payment obligation to the Developer described in Article III hereof.

**Section 2.4. Monies Held in Trust.**

All monies actually paid into the ODAT Realty Holdings, Inc. Project Cost Subaccount under the provisions hereof and the provisions of the Development Program, and all investment earnings thereon shall be held by the Town, in trust, for the benefit of the Developer in accordance with the provisions of this Agreement.

**ARTICLE III  
PAYMENT OBLIGATIONS**

**Section 3.1. Developer Payments.**

The Developer shall pay when due all taxes assessed by the Town on taxable property owned by the Developer and located on the Developer Land within the District unless contested by the Developer in good faith by appropriate proceedings pursuant to Maine law.

**Section 3.2. Town Payments.**

Within fifteen (15) days following each Tax Payment Date or the date payment of taxes by the Developer is actually received by the Town, whichever is later, the Town shall pay to the Developer an amount equal to the following percentages of total Retained Tax Increment Revenues resulting from the property tax payments due on such Tax Payment Date:

Tax Year	Percentage of Retained Tax Increment Revenues Allocated to ODAT Realty Holdings, Inc. Project	Percentage of Retained Tax Increment Revenues Allocated to Town Project
	Cost Subaccount	Cost Subaccount
2019-2020	50%	50%
2020-2021	50%	50%
2021-2022	50%	50%
2022-2023	50%	50%
2023-2024	50%	50%
2024-2025	50%	50%
2025-2026	50%	50%
2026-2027	50%	50%
2027-2028	50%	50%
2028-2029	50%	50%
2029-2030	50%	50%
2030-2031	50%	50%
2031-2032	50%	50%
2032-2033	50%	50%
2033-2034	50%	50%

If, with respect to any Tax Payment Date, the Developer fails to pay any portion of the property taxes assessed by the Town, pursuant to Section 3.1 hereof, the property taxes actually paid by the Developer with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value, and second, shall constitute Retained Tax Increment Revenues and shall be applied to the subaccounts by the percentages described above.

**Section 3.3. Manner of Payments.**

The payment provided for in this Article II shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove for its own use and benefit by check drawn on the Town.

**Section 3.4. Limited Obligation.**

The Town's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the Town, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from Retained Tax Increment Revenues. This Agreement shall not directly or indirectly or contingently obligate the Town, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation whatever therefore or to make any appropriation for their payment, excepting the Town's obligation to levy property taxes upon the Project and the pledge to Developer of the ODAT Realty Holdings, Inc. Retained Tax Increment Revenues established under this Agreement.

**Section 3.5. Obligations Unconditional.**

Except as otherwise expressly provided in this Agreement, the obligations of the Town to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Developer.

**Section 3.6. Failure of Town to Make Payment.**

In the event the Town should fail to, or be unable to, make any of the payments required under the foregoing provisions of this Article II, the item or installment so unpaid shall continue as a limited obligation of the Town, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The developer shall be entitled to initiate an action against the Town to specifically enforce its obligations hereunder, including without limitation of the Town's obligation to establish and maintain the Development Program Fund, deposit all ODAT Realty Holdings, Inc. Retained Tax Increment Revenues into the ODAT Realty Holdings, Inc. Project Cost Subaccount established hereunder and make required payments to the Developer.

## **ARTICLE IV PLEDGE AND SECURITY INTEREST**

### **Section 4.1. Pledge of ODAT Realty Holdings, Inc. Project Cost Subaccount.**

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the Town, according to the terms and conditions contained herein, and in order to secure the performance and observance of all the Town's covenants and agreements contained herein, the Town does hereby grant a security interest in and pledge to the Developer of the ODAT Realty Holdings, Inc. Program Cost Subaccount and all sums of money and other securities therein.

### **Section 4.2. Perfection of Interest.**

The Town shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all such amounts from time to time on deposit in the ODAT Realty Holdings, Inc. Project Cost Subaccount to be duly filed and recorded in the appropriate state and county 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. The Town will establish the ODAT Realty Holdings, Inc. Project Cost Subaccount as a segregated fund so as to perfect Developer's interest therein.

### **Section 4.3. Further Instruments.**

The Town shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall, except as otherwise provided in this Agreement, pledge the credit of the Town, materially disadvantage the Town, or materially change this Agreement.

### **Section 4.4. No Disposition of Development Program Fund.**

Except as permitted hereunder, the Town shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the ODAT Realty Holdings, Inc. Project Cost Subaccount.

### **Section 4.5. Access to Books and Records.**

All books, records and documents in the possession of the Town relating to the District, the Development Program, Agreement and the monies, revenues and receipt on deposit or required to be deposited into the ODAT Realty Holdings, Inc. 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 Town to pay any amounts due to Developer when the same shall become due and payable;
- b. Any failure by the Town to make deposits into the ODAT Realty Holdings, Inc. Project Cost Subaccount when due;
- c. Any failure by the Town or the Developer to observe and perform in all material respects any other covenant, condition, agreement or provision contained herein on the part of the Town or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and
- d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Town’s affairs shall have been entered against the Town or the Town shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Town or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Town or the failure by the Town to have an involuntary petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Town.

### **Section 5.2. Remedies on Default.**

Whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, either party may specifically enforce the performance or observance of any obligations, agreements or covenants of the other under this Agreement and any documents, instruments and agreements contemplated hereby or enforce any rights or remedies available hereunder.

### **Section 5.3. Remedies Cumulative.**

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 hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power to be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy,

strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

**Section 5.4. Agreement to Pay Attorneys' Fees and Expenses.**

Notwithstanding the application of any other provision hereof, in the event the Town or the Developer should default under any of the provisions of this Agreement, and the nondefaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Town or the Developer herein contained, the defaulting party shall, on demand therefore, pay to the nondefaulting party the reasonable fees of such attorneys and such other reasonable costs and expenses so incurred by the nondefaulting party if determined by a court of competent jurisdiction that the position of the defaulting party was either unreasonable or taken in bad faith.

**Section 5.5. Waiver of Governmental Immunity with Respect to Claims under this Agreement.**

The Town hereby waives its governmental immunity with respect to any actions or suits undertaken by the Developer, its successors or assigns, arising out of, resulting from or involving any alleged default by the Town hereunder or failure by the Town to observe or perform any of its obligations hereunder, it being understood and agreed that such waiver is a material inducement to the Developer entering into this Agreement and continuing its pursuit of the Project. **This waiver of governmental immunity is limited and expressly intended to permit only those legal actions of the Developer that may arise directly under or be necessarily related to this Agreement.** The parties agree that in the event of any dispute or disagreement hereunder the Developer and the Town shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism; provided however, that nothing herein shall constitute a waiver of the Town's tort immunity.

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

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

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of fifteen (15) years thereafter or upon the performance of all obligations on the part of the Town and the Developer hereunder.

**Section 6.2. Cancellation and Expiration of Term.**

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

## **ARTICLE VII**

### **ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

#### **Section 7.1. Consent to Pledge, Assignment and Grant of Security Interest**

The Town hereby acknowledges that the Developer may pledge and assign its right, title and interest in, to and under this Agreement or grant a security interest therein as collateral for financing for the Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this intention, the Town does hereby consent and agree to the pledge and assignment of or grant of a security interest in 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.

Subject to the limitations set forth in Section 4.3 hereof, the Town agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the 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 and any and all such 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 the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for the establishing, perfection and protection of its interest herein.

#### **Section 7.2. Assignment.**

Upon the sale or other transfer of ownership of the Developer Land or Project in the District, the Developer shall have the unrestricted right to transfer and assign all or any portion of its rights in, to, and under this Agreement at any time at the Developer's sole discretion.

## **ARTICLE VIII**

### **MISCELLANEOUS**

#### **Section 8.1. Successors.**

In the event of the dissolution of the Town or the Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

#### **Section 8.2. Parties in Interest.**

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the Town and the Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the Town and the Developer, its successors and assigns.

**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.**

No covenant, stipulation, obligation or agreement of either party contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the Town in his individual capacity or of any present or future employee or agent of the Developer. In addition, neither the members of the Town Council of the Town, nor any official, officer, employee or agent of the Town shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

**Section 8.5. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

**Section 8.6. Governing Law.**

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

**Section 8.7. Notices.**

All notices, certificates, requests, requisitions or other communications by the Town or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the Town:

Town Manager  
Town of Gorham  
270 Main Street  
Gorham, Maine 04038-1382

Copy to:

Jensen, Baird, Gardner & Henry  
10 Free Street  
P.O. Box 4510  
Portland, ME 04112

If to the Developer:

ODAT Realty Holdings, Inc.  
20 Sanford Drive  
Gorham, Maine 04038



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. Net Agreement.**

Subject only to the provisions of Section 3.4 hereof, this Agreement shall be deemed and construed to be a “net agreement,” and the Town shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without abatement, or setoffs, provided, it is understood that the Town’s payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid by the Developer and received by the Town.

**Section 8.10. Benefit of Assignees or Pledges.**

The Town agrees that this Agreement is executed in part to induce assignees or pledges to provide financing for the Project and accordingly all covenants and agreements on the part of the Town 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.

**Section 8.11. Integration.**

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

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

**WITNESS:**

\_\_\_\_\_

**TOWN OF GORHAM**

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

Ephrem Paraschak  
Its Town Manager

**ODAT REALTY HOLDINGS, INC.**

\_\_\_\_\_

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

Richard Pratt  
Its Owner

**Order #20-058**

Moved by Councilor Hager, seconded by Councilor Pratt and Ordered, that the Town Council forward to the Planning Board, for public hearing and recommendation, revisions to Chapter 2, Section 2-5 Minimum Standards for the Design and Construction of Streets and Ways, E. Acceptance of Streets Ways, 4. Streets Offered for Acceptance and Chapter 2, Section 2-5- Minimum Standards for the Design and Construction of Streets and Ways, H. Standards for Private Ways, and Tables 1 and 2 to add a new private way standard that would allow up to 25 lots or dwelling units. **7 yeas**

**Order #20-059**

Moved by Councilor Pratt, seconded by Councilor Shepard and Ordered, that the Town Council accept the resignation of Art Handman from the Gorham Economic Development Corporation and;

Be It Further Ordered, that the Town Council thanks him for his years of service to the Town of Gorham. **7 yeas**

Moved by Councilor Wilder Cross, seconded by Councilor Shepard and VOTED to adjourn. **7 yeas**

Time of adjournment; 7:58pm

A True Record of Meeting  
05-05-2020

ATTEST \_\_\_\_\_05-06-2020  
Laurie Nordfors, Town Clerk