

EXHIBIT 5

**CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
FIRST SCARBOROUGH REALTY OF MAINE, LLC**

This is a Contract Zoning Agreement made as of the 21st day of August 2002, by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter “the Town”), and First Scarborough Realty of Maine, LLC with an office at 178 U.S. Route One, Falmouth, Maine 04105, pursuant to the Contract Zoning provisions of Section II, Subsection I of the Scarborough Zoning Ordinance.

WHEREAS, First Scarborough Realty of Maine, LLC intends to purchase from Joseph H. Guite, a parcel of real estate located at 133, 137, 149 U.S. Route One in Scarborough, Maine consisting of 5.76 acres (hereinafter “the property”); and,

WHEREAS, the property is currently in a General Business District (B-2) under the Scarborough Zoning Ordinance; and,

WHEREAS, the General Business District (B-2) presently allows, as permitted uses, general retail sales, services and business space such as retail business and service establishments including warehousing and wholesale distribution but exclusive of outside sales and services; and,

WHEREAS, the property contains several select mature trees along the Route 1 frontage, and will include extensive landscaping, which will provide a unique amount and quality of vegetative buffering; and,

WHEREAS, First Scarborough Realty of Maine, LLC wishes to develop the property as a Mercedes Benz Automobile Dealership with outdoor sales and services which are not permitted in the B-2 Zone; and,

WHEREAS, First Scarborough Realty of Maine, LLC has requested a rezoning of the property to permit an Automobile Dealership with outdoor sales and services; and,

WHEREAS, First Scarborough Realty of Maine, LLC has requested a rezoning of the property to permit automobile display at a minimum of 15 feet from the property line; and,

WHEREAS, the size, location, configuration and topography of this site permit a level of buffering, landscaping and site design which will mitigate what might otherwise be adverse impacts of outdoor displays, storage and sales, provided the operation is restricted to the density, scale and intensity proposed by First Scarborough Realty of Maine, LLC and further provided that the restrictions of the Contract Zoning Agreement and the site plan approval are strictly observed; and,

WHEREAS, the Scarborough Planning Board, pursuant to the Zoning Ordinance, and after notice and hearing and due deliberation thereon, recommend the rezoning of the property as aforesaid; and,

WHEREAS, the rezoning would be consistent with the Policies and Future Land Use Plan of Part III of the Scarborough Comprehensive Plan; and,

WHEREAS, the Town of Scarborough, by and through its Town Council, had determined that the said rezoning would be pursuant to and consistent with the Town’s Comprehensive Plan and consistent with the existing and permitted uses within the original zoning district classification and has authorized the execution of this Contract Zoning Agreement on August 21, 2002.

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

EXHIBITS

1. The Town will amend the Zoning Map of the Town of Scarborough, by adopting the map change amendment as shown on Attachment 1.
2. First Scarborough Realty of Maine, LLC is authorized to create an Automobile Dealership at the property consisting of one building. The facility will be substantially constructed within one year after execution of this agreement. Construction of the facility shall be subject to the following conditions:
 - (a) The maximum allowable building footprint for the building shall be 24,000+/- s.f. and the maximum allowable building height shall be 1 story.
 - (b) The uses allowed on the property shall be limited to an automobile dealership with outdoor sales, display and storage of motor vehicles and indoor sales, service and display.
 - (c) Building design, style and materials and the design of all features of the site should comply with the Town of Scarborough Design Guidelines adopted by the Scarborough Planning Board on July 16, 2001 unless First Scarborough Realty of Maine, LLC submits and the Planning Board approves an alternative design during the site plan review process.
 - (d) The property shall be landscaped to enhance the general appearance of the project from U.S. Route 1 and surrounding properties as determined by the Planning Board at the time of site plan approval. After the date of approval of this Contract Zoning Agreement by the Scarborough Town Council, no trees or other vegetation existing on that date shall be removed except as indicated in an approved site plan. The landscaping shall be maintained by First Scarborough Realty of Maine, LLC or its successors in interest.
 - (e) With the exception of emergency situations, the hours during which the business may be open to the public shall be limited to 6 a.m. to 9 p.m. Monday through Saturday.
 - (f) First Scarborough Realty of Maine, LLC, its agents and employees shall not utilize First Street, Hudson Avenue, Littlefield Lane, Sunset Road, Second Avenue, Third Avenue, Fourth Avenue, Elmwood Avenue, Maple Avenue and Greenacres Lane to road test vehicles before or after servicing, demonstrate vehicles or provide customer test drives, except that vehicles being road tested, demonstrated or test-driven may traverse First Street and Greenacres Avenue for access to and from U. S. Route One. In addition, First Scarborough Realty of Maine, LLC shall notify all vendors, jobbers and delivery vehicle operators who regularly visit the property that they should avoid traveling on the foregoing streets and roads and utilize only U. S. Route One or First Street via Greenacres to access to the property, with direct access from U. S. Route One being preferred.
 - (g) The property subject to this Contract Zoning Agreement shall be developed and used only in accordance with the site plan, to be approved by the Scarborough Planning Board, as that site plan may be amended from time to time pursuant to the provisions of the Scarborough Site Plan Review Ordinance. Any amendment which involves the following changes will require an amendment to this Contract Zoning Agreement:
 - (i) Any increase in the square footage of the area utilized for outdoor display, storage or parking of vehicles on the site; and
 - (ii) Relocation of any outdoor vehicle storage, display or parking area to any part of the site closer to the property boundaries or road sidelines than shown on the original approved site plan.

EXHIBITS

(h) Sanding and painting of vehicles will not be done on site.

Any other revision to the approved site plan shall first be submitted to the Scarborough Town Council, which will determine whether the proposed revision can be approved exclusively by the Planning Board under the Site Plan Review Ordinance or will require an amendment to this Contract Zoning Agreement.

3. First Scarborough Realty of Maine, LLC shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after its approval by the Scarborough Town Council.
4. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the property except as this Contract Zoning Agreement may be amended by future written agreement of the Town of Scarborough and First Scarborough Realty of Maine, LLC or its successors in interest.

This is the sole zoning for the property and except as otherwise set forth in the aforesaid conditions, all other requirements of the underlying B-2 Zoning District shall apply. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the property, shall bind First Scarborough Realty of Maine, LLC, its successors in interest and assigns of said property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Scarborough.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Zoning Ordinance of the Town of Scarborough and any applicable amendments thereto or replacement thereof.

In the event that First Scarborough Realty of Maine, LLC or its successors or assigns fail to develop the project in accordance with this Contract, or in the event of any other breach hereof, this Contract may be terminated by vote of the Scarborough Town Council. In that event, the property may then be used only for such uses as are otherwise allowed by law.

The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Scarborough Zoning Ordinance and through legal action for specific performance of the Agreement.

WITNESS:

TOWN OF SCARBOROUGH

S/ Laurel R. Nadeau

S/ Ronald W. Owens

**ITS TOWN MANAGER DULY AUTHORIZED BY VOTE OF THE SCARBOROUGH
TOWN COUNCIL ON AUGUST 21, 2002**

WITNESS:

First Scarborough Realty of Maine, LLC

EXHIBITS

FIRST AMENDMENT FOR EXHIBIT 5

**THE CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
FIRST SCARBOROUGH REALTY OF MAINE, LLC**

WHEREAS, First Scarborough Realty of Maine, LLC ("First Scarborough Realty") entered into a Contract Zoning Agreement with the Town of Scarborough (the "Town") on the 21st day of August 2002, a copy of which is attached hereto as Exhibit 1 (the "Contract"); and

WHEREAS, since the execution of the Contract, First Scarborough Realty has acquired an additional 12,600 square foot parcel of land (the "Porath Lot") adjacent to the property which is the subject of the Contract; and

WHEREAS, First Scarborough Realty proposes to utilize the Porath Lot for an enlarged parking area; and

WHEREAS, First Scarborough Realty wishes to enlarge the building proposed in the Contract by approximately 1200 square feet and to shift the location of the building by approximately 25 feet toward the south; and

WHEREAS, First Scarborough Realty proposes to have additional automobile display area in the front of the building and to the south of the entrance driveway;

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

1. The Town will amend the Zoning Map of the Town of Scarborough to include the Porath Lot in the property subject to the Contract, by adopting the map change shown on Attachment 1 hereto.
2. All references in the Contract to the "site plan" shall hereafter mean the amended site plan to be approved by the Scarborough Planning Board, which shall be substantially as depicted on the amended site layout plan attached hereto as Exhibit 2.
3. The second sentence of section 2 of the Contract is amended to read as follows: "The facility will be substantially constructed within one year after the execution of the First Amendment to the Contract Zoning Agreement.
4. Section 2(a) of the Contract is amended to read: "The maximum allowable building footprint for the building shall be 25,200+/- s.f. and the maximum allowable building height shall be 1 story."
5. Except as amended hereby, all terms of the Contract shall remain in full force and effect. First Scarborough Realty and the Town hereby reaffirm each and every provision of the Contract.
6. First Scarborough Realty shall record this First Amendment to the Contract Zoning Agreement within 30 days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Contract Zoning Agreement this 16th day of September 2004.

WITNESS:

FIRST SCAROROGH REALTY OF MAINE, LLC

By: _____

William G. Waldron, Jr.

Its Manager

EXHIBITS

WITNESS:

TOWN OF SCARBOROUGH

/s/ Laurel R. Nadeau

By: /s/ Ronald W. Owens, Town Manager

State of Maine

County of Cumberland, ss.

Date: _____

PERSONALLY APPEARED the above-named _____ in his capacity as _____ of First Scarborough Realty of Maine, LLC and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said company.

Notary Public / Attorney at Law

State of Maine

County of Cumberland, ss.

Date: September 16, 2004

PERSONALLY APPEARED the above-named Ronald W. Owens in his capacity as Town Manager of the Town of Scarborough, Maine and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said Town.

/s/ Marcia McGinnis

Notary Public

**SECOND AMENDMENT TO
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH
AND 137 U.S. ROUTE ONE SCARBOROUGH REALTY, LLC
(formerly First Scarborough Realty of Maine, LLC)**

THIS CONTRACT ZONING AGREEMENT is made by and between the Town of Scarborough, a Maine municipality with its principal office located at the Scarborough Municipal Building, 259 U.S. Route 1, Scarborough, Maine (the "Town") and 137 U.S. Route One Scarborough Realty, LLC, a Maine limited liability company with a principal office located at 137 U.S. Route One, Scarborough, Maine ("137 US Route One").

RECITALS

WHEREAS, First Scarborough Realty of Maine, LLC, a Maine limited liability company ("First Scarborough Realty") is a predecessor in interest and in title to 137 U.S. Route One; and,

WHEREAS, First Scarborough Realty entered into a Contract Zoning Agreement with the Town on August 21, 2002, subsequently amended by an amendment dated on or about September 16, 2004 (hereinafter and taken together "First Agreement") in connection with certain improvements made to property located at 137 U.S. Route One and more particularly described in the First Agreement; and,

WHEREAS, the First Agreement (together with all exhibits and schedules appended thereto) is appended to this Agreement as *Exhibit 1*; and,

WHEREAS, First Scarborough Realty conveyed its interest to 137 US Route One by deed dated April 26, 2005 and recorded in the Cumberland County Registry of Deeds at Book 22565, Page 326, the premises and all improvements situated thereon hereinafter referred to as the "Original Parcel"; and,

WHEREAS, 137 US Route One proposes to acquire additional property adjoining the Original Parcel, more particularly described in a deed from Drake Petroleum Company, Inc. to SRAM Corp. dated July 28, 2011 and recorded in the Cumberland County Registry of Deeds at Book 28856, Page 233 (the "New Parcel") for the purpose of expanding and improving the existing automobile dealership showroom located on the Original Parcel and other related purposes (together referred to as the "Property").

WHEREAS, the rezoning and inclusion of the New Parcel into the Contract Zoning District ("the District") and this Second Amendment is pursuant to and consistent with the Town's Comprehensive Plan and with the existing and permitted uses within the original zoning district classification;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as received by each, the parties covenant and agree as follows:

1. All terms, conditions, covenants, representations, warranties, benefits and burdens set forth in the

EXHIBITS

First Agreement (including all exhibits and schedules appended thereto) are affirmed, adopted, ratified and accepted by the Town and 137 US Route One and incorporated herein as if restated in full, subject to any conflict or inconsistency between the First Agreement and this Second Amendment, in which case this Second Amendment shall govern and control.

2. The Town hereby amends the Zoning Map of the Town of Scarborough to include the New Parcel in the District by adopting the map change shown on Exhibit 2A.
3. 137 US Route One is authorized to make the improvements and modifications to the Property as described in a certain "Site Plan - Proposed Second Amendment to the Contract Zone Agreement for Prime Mercedes Benz " prepared by Sebago Technics, revised through 4-07-2015 (the "Site Plan") attached as Exhibit 2B. Construction of the improvements shall be subject to the following conditions:
 - a. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, one additional business sign is permitted as shown on the Site Plan.
 - b. Notwithstanding the landscaping requirements in Section XVIII.A of the Zoning Ordinance, as it may be amended from time to time, a reduction in the required 15' green strip buffer is permitted to the extent shown on the Site Plan.
 - c. The uses allowed shall be limited to an automobile dealership with outdoor sales, display and storage of motor vehicles and indoor sales, service and display.
 - d. Special events and assembly activities may be conducted within any building as an accessory use, subject to any other required codes and approvals.
 - e. The Property subject to this Agreement shall be developed and used only in accordance with the Site Plan, to be approved by the Scarborough Planning Board, as that site plan may be amended from time to time.
4. 137 US Route One shall record this Agreement within 30 days after its approval by the Scarborough Town Council.
5. The provisions of this Agreement shall be deemed restrictions on the use of the Property, except as this Agreement may be amended by future written agreement of the Town and 137 US Route One or its successors in interest.
6. This is the sole zoning for the Property, and except as otherwise set forth in the aforesaid conditions, all other requirements of the underlying TVC Zoning District shall apply. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind 137 US Route One, its successors in interest and assigns, and shall inure to the benefit of and be enforceable by the Town.
7. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Zoning Ordinance of the Town and any applicable amendments thereto or replacement thereof.
8. In the event that 137 US Route One or its successors or assigns fail to develop the Property in accordance with this Agreement, or in the event of any other breach hereof, this Agreement may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses as are otherwise allowed by law.

EXHIBITS

9. The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Scarborough Zoning Ordinance and through legal action for specific performance of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____ 2015.

WITNESS:

_____	137 ROUTE ONE SCARBOROUGH REALTY, LLC
	By: _____
	Ira Rosenberg Its
	Manager
	TOWN OF SCARBOROUGH
_____	By: _____
	Thomas Hall Its Town
	Manager

STATE OF MAINE
Cumberland, ss.

Date: _____

PERSONALLY APPEARED the above-named Ira Rosenberg, in his capacity as Manager of 137 US Route One Scarborough Realty, LLC and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said limited liability company.

Before me,
Notary Public/Attorney at Law

STATE OF MAINE
Cumberland, ss.

Date: _____

PERSONALLY APPEARED the above-named Thomas Hall, in his capacity as Town Manager of the Town of Scarborough, Maine and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said Town.

Before me,
Notary Public/Attorney at Law

THIRD AMENDMENT TO

**CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH
AND 137 U.S. ROUTE ONE SCARBOROUGH REALTY, LLC
(formerly First Scarborough Realty of Maine, LLC)**

THIS CONTRACT ZONING AGREEMENT is made by and between the Town of Scarborough, a Maine municipality with its principal office located at the Scarborough Municipal Building, 259 U.S. Route 1, Scarborough, Maine (the "Town") and 137 U.S. Route One Scarborough Realty, LLC, a Maine limited liability company with a principal office located at 137 U.S. Route One, Scarborough, Maine ("137 US Route One").

RECITALS

WHEREAS, First Scarborough Realty of Maine, LLC, a Maine limited liability company ("First Scarborough Realty") is a predecessor in interest and in title to 137 U.S. Route One; and,

WHEREAS, First Scarborough Realty entered into a Contract Zoning Agreement with the Town on August 21, 2002, subsequently amended by an amendment dated on or about September 16, 2004 (hereinafter and taken together "First Agreement") in connection with certain improvements made to property located at 137 U.S. Route One and more particularly described in the First Agreement; and,

WHEREAS, the First Agreement (together with all exhibits and schedules appended thereto) is appended to this Agreement as *Exhibit 1*; and,

WHEREAS, First Scarborough Realty conveyed its interest to 137 US Route One by deed dated April 26, 2005 and recorded in the Cumberland County Registry of Deeds at Book 22565, Page 326, the premises and all improvements situated thereon hereinafter referred to as the "Original Parcel"; and,

WHEREAS, 137 US Route One acquired additional property adjoining the Original Parcel, more particularly described in a deed from SRAM Corp. to 137 U.S. Route One Scarborough, LLC dated June 16, 2015 and recorded in the Cumberland County Registry of Deeds at Book 32352, Page 208 (the "New Parcel") for the purpose of expanding and improving the existing automobile dealership showroom located on the Original Parcel and other related purposes (together referred to as the "Property"); and,

WHEREAS, 137 US Route One and the Town entered into a Second Amendment to Contract Zoning Agreement dated April 30, 2015 and recorded in the Cumberland County Registry of Deeds at Book 32238, Page 198 (the "Second Amendment"), a copy of which is attached to this Third Amendment as *Exhibit 2*; and,

WHEREAS, the rezoning and inclusion of the New Parcel into the Contract Zoning District ("the District") is pursuant to and consistent with the Town's Comprehensive Plan and with the existing and permitted uses within the original zoning district classification; and,

WHEREAS, by operation of this Third Amendment to Contract Zoning Agreement (the "Third Amendment"), 137 US Route One desires to increase the size of the footprint of building to be located on the New Parcel also pursuant to and consistent with the Town's Comprehensive Plan and with the existing and permitted uses within the original zoning district classification.

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged as received by each, the parties covenant and agree as follows:

EXHIBITS

1. All terms, conditions, covenants, representations, warranties, benefits and burdens set forth in the First Agreement and Second Amendment (including all exhibits and schedules appended thereto) are affirmed, adopted, ratified and accepted by the Town and 137 US Route One and incorporated herein as if restated in full, subject to any conflict or inconsistency between the First Agreement, the Second Amendment and this Third Amendment, in which case this Third Amendment shall govern and control.
2. 137 US Route One is authorized to make the improvements and modifications to the Property as described in a certain "Site Plan - Proposed Contract Zone Amendment for Prime Motor Mercedes Benz - Sprinter" prepared by Gawron Turgeon Architects, Scarborough, Maine, revised through April 27, 2016 (the "Site Plan") attached as *Exhibit 2B*. Within this authorization is specific authorization to permit the maximum allowable building footprint for the building to be constructed on the New Parcel to be 26,290 ± square feet. Construction of the improvements shall be subject to the following conditions:
 - a. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, one additional business sign is permitted as shown on the Site Plan.
 - b. Notwithstanding the landscaping requirements in Section XVIII.A of the Zoning Ordinance, as it may be amended from time to time, a reduction in the required 15' green strip buffer is permitted to the extent shown on the Site Plan.
 - c. The uses allowed shall be limited to an automobile dealership with outdoor sales, display and storage of motor vehicles and indoor sales, service and display.
 - d. Special events and assembly activities may be conducted within any building as an accessory use, subject to any other required codes and approvals.
 - e. The Property subject to this Agreement shall be developed and used only in accordance with the Site Plan, to be approved by the Scarborough Planning Board, as that site plan may be amended from time to time.
3. 137 US Route One shall record this Agreement within 30 days after its approval by the Scarborough Town Council.
4. The provisions of this Agreement shall be deemed restrictions on the use of the Property, except as this Agreement may be amended by future written agreement of the Town and 137 US Route One or its successors in interest.
5. This is the sole zoning for the Property, and except as otherwise set forth in the aforesaid conditions, all other requirements of the underlying TVC Zoning District shall apply. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind 137 US Route One, its successors in interest and assigns, and shall inure to the benefit of and be enforceable by the Town.
6. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Zoning Ordinance of the Town and any applicable amendments thereto or replacement thereof.
7. In the event that 137 US Route One or its successors or assigns fail to develop the Property in accordance with this Agreement or in the event of any other breach hereof, this Agreement may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses as are otherwise allowed by law.
8. The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Scarborough Zoning Ordinance and through legal action for specific performance of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of ___, 2016
WITNESS:

By: _____
Ira Rosenberg Its
Manager

By: _____
Thomas Hall
It's Town Manager

Date: _____

Before me,
Notary Public/Attorney at Law

Date: _____

Before me,
Notary Public/Attorney at Law

Page 52 of 163



