

EXHIBIT 7 –

**HILLCREST RETIREMENT COMMUNITY EXPANSION
CONTRACT ZONING AGREEMENT AMONG
THE TOWN OF SCARBOROUGH,
THERESA DESFOSSES, AGNES DESFOSSES
AND STATE MANUFACTURED HOMES, INC.**

This Contract Zoning Agreement made as of the 3rd day of November, 2004, by and among the Town of Scarborough, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter the “Town”) and Theresa Desfosses and Agnes Desfosses, individuals, both having a mailing address of 126 U.S. Route 1, Scarborough, Maine 04074 and State Manufactured Homes, Inc. (“SMH”), a Maine corporation, also having a mailing address of 126 U.S. Route 1, Scarborough, Maine 04094 pursuant to the Contract Zoning provisions of Section II, Subsection I of the Scarborough Zoning Ordinance, Chapter 405 of the Town’s Ordinances (the “Ordinance” or “Zoning Ordinance”). Theresa Desfosses and Agnes Desfosses are collectively referred to herein as the “Owners.” Owners and SMH are collectively referred to herein as the “Developers.” The Town and the Developers are collectively referred to herein as the “Parties.” Capitalized terms not otherwise defined herein shall have the meaning set forth in the Ordinance.

WHEREAS, Theresa Desfosses and Agnes Desfosses (“Owners”) are the owners of certain real estate located off of Hillcrest Avenue in Scarborough, Maine consisting of approximately 186 acres, and identified on Town Assessor’s Tax Map R76 as lots 7, 8 and 11 and Tax Map R78 as lot 87 and as described in instruments recorded in the Cumberland County Registry of Deeds at Book 4116, Page 174 and Book 8901, Page 133, a 156.52 acre portion of which real estate as shown on Exhibit A is the subject of this Agreement (the “Property”); and

WHEREAS, as shown on Exhibit A, the Property subject to this Agreement has been divided into three sections for the purposes of designation in this Agreement: approximately 153.74 acres of the Property which is presently undeveloped (the “Expansion Section”), approximately 0.55 acre of the Property upon which is located SMH’s retail sales office, its storage building, and a residence (the “Route One Section”), and approximately 2.23 acres of the Property which is presently principally used by SMH as a display and storage area for manufactured homes and includes a two car garage and a portion of Hillcrest Drive (the “Commercial Section”);

WHEREAS, SMH is presently the lessee from Owners of the Route One Section and the Commercial Section, upon which SMH operates a retail sales facility selling manufactured homes, and of another portion of Owners’ aforesaid real estate which abuts Commercial Section and Expansion Section of the Property and upon which SMH operates a manufactured housing community, known as Hillcrest Retirement Community, which provides housing for older persons, and SMH has an lease option to lease long term the Property from Owners;

WHEREAS, the General Business District, Industrial Zone, Residential District R-3 and the Resource Protection District, the present zoning classifications of the Ordinance which affect the various parts of the Property, do not otherwise permit the expansion of an existing manufactured housing community; and

WHEREAS, Developers desire to expand Hillcrest Retirement Community, the existing manufactured housing community, by developing the Property to accommodate 175 lots on which lots manufactured homes would be placed (the “Expansion Project”); and

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WHEREAS, Developers have requested a rezoning of the Property to permit the expansion of the existing manufactured housing development beyond the scope of those zoning classifications currently in effect for the Property; and

WHEREAS, the Property contains frontage near and on the Nonesuch River and several wetlands that will be maintained and preserved; and

WHEREAS, the Expansion Project serves the goals of Chapter 15(A) of the Town's Comprehensive Plan adopted pursuant to Title 30-A Maine Revised Statutes, Chapter 187, Sub-part 6-A (hereafter "Comprehensive Plan"), which seeks to foster and accommodate a diverse population in the Town by constructing a manufactured housing development to serve the needs of senior citizens and retirees in need of more affordable housing; and

WHEREAS, the Expansion Project serves the goals of Chapter 15(E) of the Comprehensive Plan by enhancing public access to the upper reaches of the Nonesuch River and trail systems; and

WHEREAS, the Expansion Project serves the goals of Chapter 15(F) of the Comprehensive Plan by encouraging growth of more affordable housing and a pattern of land use that can be served efficiently and does not impose undue burden on the Town's financial resources; and preserves the historic pattern and character of neighborhoods; and

WHEREAS, the Expansion Project serves the goals of Chapter 15(G) of the Comprehensive Plan by using public sewer and water facilities; and

WHEREAS, the Expansion Project serves the goals of Chapter 15(H) of the Comprehensive Plan encouraging a choice of housing for residents of all ages and incomes and encouraging and promoting more affordable, decent housing opportunities for all Maine citizens by expanding a type of senior citizen community not currently sufficiently available in the Town; and

WHEREAS, the Expansion Project serves the public interest by providing an easement for a continuation across the property of the Eastern Trail; and

WHEREAS, the Expansion Project provides for significant visual improvement at the beginning of the Route One corridor into Scarborough, consistent with the Design Standards for Scarborough's Commercial Districts; and

WHEREAS, a joint Scarborough Planning Board/Town Council meeting was noticed, held and conducted pursuant to Section II, Paragraph I, Subsection 4.a. of the Zoning Ordinance; and

WHEREAS, the Scarborough Planning Board, pursuant to Section II, Paragraph I, Subsection 4.b. of the Zoning Ordinance and 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation thereon, reviewed and on September 13, 2004, granted preliminary, provisional subdivision and site plan approval of the Expansion Project with comments and a condition that resource protection classified lands be included in the Expansion Zone, subject to enactment of the contract zoning amendment by the Town Council; and

WHEREAS, the rezoning provided in this Agreement, therefore, would be consistent with the Policies and Land Use and Housing plan of Chapter 15 of the Scarborough Comprehensive Plan; and

WHEREAS, the Town of Scarborough, by and through its Town Council, therefore, pursuant to Section II, Paragraph I, Subsection 4.c. on October 13, 2004 found and concluded as set forth in its Legislative Facts that that this Contract Zoning Agreement (1) is consistent with the Town of Scarborough Comprehensive Plan, (2) is consistent and compatible with the existing and permitted uses within the existing zoning district classifications of the Property, (3) is in the public interest, and (4) will have beneficial effects on the town as a whole which would not result if the Property were developed

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under the existing zoning district classifications, and authorized the execution of this Contract Zoning Agreement.

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

1. Zoning Map Amendment. The Town hereby amends the Zoning Map of the Town of Scarborough, by adopting the zoning map change amendment shown on Exhibit 1.

2. Hillcrest Retirement Community Expansion Zone. The Parties hereby create the Hillcrest Retirement Community Expansion Zone as defined herein for the Property described in Exhibit A. For purposes of this Agreement, the Hillcrest Retirement Community Expansion Zone (hereafter also referred to as the “Expansion Zone”) means an expansion of the existing senior age restricted residential manufactured housing development, such expansion to be designed and built as set forth in this Agreement and Exhibit A.

The general schematic street layout, open space system and distribution of uses (including location of the Eastern Trail easement) shall conform to Exhibit A, as such plans may be amended as set forth hereinafter from time to time pursuant to the provisions of the Scarborough Site Plan Ordinance and Subdivision Regulations. The improvements may be constructed in Phases as shown on Exhibit A (the “Phases”).

3. Permitted Uses. The Owners are authorized to establish and maintain uses at the Property as follows:

(i) *In the Expansion Section the following uses shall be permitted:*

- A. Single family residential manufactured homes available for lease, sale or rent located on the sites depicted on Exhibit A.
- B. A community center.
- C. An exercise and fitness center for the exclusive use of community members and their invitees only.
- D. Management and sales offices.
- E. Temporary storage of manufactured homes, provided, however, that not more than twenty (20) of the temporarily stored manufactured homes shall be pending delivery to locations outside the Expansion Section at any one time.
- F. Accessory uses and structures, including but not limited to maintenance facilities, parking areas, utility services, storm water management systems, site amenities, and outside recreational spaces.

Provided, however, the only uses permitted in the areas denoted on Exhibit A as “Resource Protection Area” shall be uses that are permitted by the Scarborough Shoreland Zoning Ordinance in the Resource Protection (R-P) District zoning classification.

(ii) *In the Route One Section the following uses shall be permitted:*

- A. Single Family Dwelling Unit, associated garaging, and associated residential uses.
- B. Manufactured home sales and service center, provided, however, that no display or storage of manufactured homes for purposes of sale shall occur.
- C. Manufactured home community administrative office, which may be of manufactured home or modular building construction.

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- D. Access to other portions of the Property, Hillcrest Retirement Community and any property of abutters to the Property.
- E. Signage for Hillcrest Retirement Community, for SMH and for any use permitted on the Property as depicted on Exhibit B.
- F. Any lawful nonconforming use permitted to continue under and subject to the provisions of Section III of the Zoning Ordinance.
- G. Any use and accessory uses permitted (including uses permitted as special exceptions) in the General Business District B-2 zone.

(iii) *In the Commercial Section the following uses shall be permitted:*

- A. Manufactured home sales and service center, including the display and storage of manufactured homes.
- B. Manufactured home community administrative office, which may be of manufactured home or modular building construction.
- C. Access to other portions of the Property, Hillcrest Retirement Community and any property of abutters to the Property.
- D. Signage for Hillcrest Retirement Community, for SMH and for any use permitted on the Property.
- E. Any uses permitted in the Route One Section immediately above.
- F. Display and storage of manufactured homes.
- G. Any use and accessory uses permitted (including uses permitted as special exceptions) in the General Business District B-2 zone.
- H. Any lawful nonconforming use permitted to continue under and subject to the provisions of Section III of the Zoning Ordinance.

4. Area Dimensional and Design Criteria. The following criteria shall apply:

(i) *In the Expansion Section the following area dimensional and design criteria apply:*

- A. Building Height: The maximum building height shall not exceed 35 feet.
- B. Building Design: All manufactured homes located on lots are subject to the following restrictions and limitations:
 - 1. Installation on the Property shall be in compliance with the State of Maine installation standards for manufactured housing.
 - 2. The exterior wall surfaces shall be covered with material similar to traditional site built housing units. These materials presently include clapboards such as conventional vinyl or metal siding, wood shingles or shakes or similar materials.
 - 3. The homes shall be constructed with a roof having a pitch of 3 in 12 or greater.
 - 4. Roofs are to be covered with asphalt or fiberglass composition shingles or other contemporary building materials.

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- C. Landscaping: At least two trees shall be planted on each manufactured home lot. Such trees shall be at least 2" caliper if deciduous, five feet in height if evergreen.
- D. Density: Residential manufactured homes within the Expansion Project shall be placed on lots of location and size as shown on Exhibit A.
- E. Setbacks and separation: The front, rear and side yards shall be as generally shown on the Site Plan approved by the Planning Board. A minimum 20-foot separation shall be maintained between all manufactured homes in all directions.
- F. Property coverage: All structures constructed on the Property, but excluding open decks and parking related structures, shall not cover more than 50% of the Property area.
- G. Open space: Open space not developed shall be left in its natural state unless otherwise shown on the Site Plan approved by the Planning Board.
- H. Roads: On or before occupancy of Phase III lots (lots 83-129), Developers shall construct the new access road to Route 1 on the northerly side of the Expansion Project, as shown on Exhibit A for use by residents of the Expansion Project. The layout, general development plan and construction phasing for the Expansion Project's roads and ways, together with the location and dimensions of access junctions with existing public streets, shall be as approved by the Planning Board. All streets within the Expansion Project shall remain private and be privately maintained.
- I. Parking: For each manufactured house lot in the Expansion Project there shall be at least two off-street parking spaces, which may be located on the lot. Each parking space shall contain a minimum area of 200 square feet with minimum dimensions of 10 feet by 20 feet.
- J. Lighting: Outdoor lighting shall be provided to adequately illuminate the internal streets of the Expansion Project.

(ii) *In the Route One Section the following area dimensional and design criteria apply:*

- A. Notwithstanding anything to the contrary in the Zoning Ordinance, existing structures may be improved and replaced and increased in height to a maximum height of 35 feet, but the existing footprints on the earth of such structures as identified on Exhibit A shall not be changed in location or increased in size.
- B. Walkways, ramps, porches and other appurtenances to existing structures, or the replacements of such structures, may be improved and replaced and increased in height, but the existing footprints of such appurtenances on the earth as identified on Exhibit A shall not be increased.
- C. Landscaping shall be of the type and scope shown on Exhibit B. See Section 10 below.
- D. Except as otherwise provided in Section 4(ii)(A) through (C) above, the dimensional area and design criteria of the General Business District B-2 zone shall apply.
- E. Except as otherwise provided in Section 4(ii)(A) through (C) above, existing structures and uses which do not conform with the dimensional, area and design criteria of the General Business District B-2 zone are subject to the rules

governing nonconforming lots, uses and structures contained in Section III of the Zoning Ordinance.

(iii) *In the Commercial Section the following area dimensional and design criteria apply:*

- A. The dimensional area and design criteria of the General Business District B-2 zone shall apply.
- B. Existing structures and uses which do not conform with the dimensional, area and design criteria of the General Business District B-2 zone are subject to the rules governing nonconforming lots, uses and structures contained in Section III of the Zoning Ordinance.

5. Residents. Housing within the Expansion Section shall meet the federal Fair Housing Act definition of “housing for older persons”, as it may be amended, and which presently is defined as: (i) HUD has determined that the dwelling is specifically designed for and occupied by elderly persons under a Federal, State or local government program; or, (ii) it is occupied solely by persons who are 62 or older; or, (iii) it houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.

6. Utilities: All lots in the Expansion Section on which manufactured homes are placed shall be provided with electrical, water, and sewage disposal connections in accordance with applicable state and local rules and regulations. The Expansion Section shall be serviced by the following public utilities:

- A. Wastewater disposal shall be provided by a connection to existing or to be constructed sanitary sewers traversing the Project. Individual lots may be served by gravity or pumping. All new pumping stations shall be privately maintained.
- B. Water supply may be provided by a connection to existing water supply mains in the existing Hillcrest Retirement Community or to new water supply mains. Public water shall serve the Expansion Project, and to encourage water conservation, sub-metering may be provided to a lot on which a manufactured home is located.
- C. Electric service shall be provided underground from pad-mounted transformers to lots on which manufactured homes are located.
- D. Telephone and cable service, to the extent provided, shall be underground throughout the Expansion Project.

7. Plan. The Property shall be generally developed and used in accordance with Exhibit A, as approved by the Town Council on November 3, 2004, as that plan may be further approved and amended from time to time pursuant to the provisions of the Scarborough Site Plan Ordinance and Subdivision Ordinance and this Agreement. Notwithstanding any other provisions of the Ordinance, the physical layout, dimensions, setbacks, parking and proposed uses and improvements shown on Exhibit A and identified in this Agreement shall be permitted under the Ordinance.

8. Status of Approvals/Amendments. Exhibit A to this Agreement is the plan which has received preliminary Subdivision Approval for the entire Property under the Town’s Subdivision Ordinance. Any amendment to Exhibit A or this Agreement which involves the following changes to the terms of this Agreement will require an amendment approved by the Town Council after a public hearing:

- A. any change in permitted uses.
- B. any increase above 175 in the number of manufactured housing lots.

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Except for the foregoing, any other changes to the Expansion Project and any subsequent site plan approvals or subsequent site plan and/or subdivision amendments need only be approved by the Planning Board after a public hearing in accordance with this Agreement without need for further Town Council approval, provided that the Planning Board shall not have the authority to waive the terms of this Agreement and provided any such changes are consistent with this Agreement.

9. Eastern Trail Easement and Trail Construction Fund. To facilitate the construction of an extension of the Eastern Trail for the public over the Property, and in lieu of any recreational fee required by Town policy:

- A. At or prior to issuance of any permits for commencement of construction of the Expansion Project, Developers shall convey for no additional consideration to the Town and the Eastern Trail Alliance (“ETA”) (collectively, the Town and ETA are hereafter referred to as “holders”) an easement at least thirty feet wide for construction of and public use of a twelve (12) foot wide unpaved public recreational Trail (“Trail”) with shoulders of up to five (5) foot width located in the approximate location shown on Exhibit A, to be part of the Eastern Trail system in Scarborough. The Trail shall be designed and designated so that it will not be used by any motorized or otherwise non-human propelled vehicles; for example, snowmobiles, ATV’s, dirt bikes and other off-road vehicles are prohibited from use of the Trail. The easement shall include provisions and requirements that (1) Trail use, maintenance and anti-waste requirements and restrictions shall be rigorously followed and enforced by the holders; (2) the Trail shall be well maintained by the holders of the easement; (3) the term of the easement is perpetual, but subject to termination by written notice of voluntary abandonment by the holders or by court decision if the court finds that (i) the holders have materially failed to comply with their obligations as set forth in the easement, or (ii) the general public has not used the Trail on a regular basis for a period of three (3) years. If the easement is so terminated by court decision, the holders (jointly and severally) shall be responsible for the payment of Developer’s reasonable attorney’s fees incurred in such court proceeding.
- B. Upon the issuance of the first certificate of occupancy for a Dwelling Unit within the Expansion Project, Developers shall pay to the Town a fee (the “Eastern Trail Fee”) in the amount of Sixty Thousand Dollars (\$60,000.00). The Eastern Trail Fee shall be placed in a separate account held by the Town and used for the construction of the aforesaid Trail in the Expansion Project. To the maximum extent possible, the Eastern Trail Fee shall be used by the Town to leverage the acquisition of other funds from private, local, state or federal sources for construction of the Trail.
- C. Prior to the commencement of Phase One and thereafter during the periods of construction, Developer shall assist the Town and the Eastern Trail Management District to coordinate with Developer’s engineers and construction contractors trail construction activities so to efficiently utilize funds available from and through the Town and the ETA (including the Eastern Trail Fee) for the construction of the Trail. Developer is not required to delay its construction to assist the trail construction. The Parties contemplate that coordinated activities may include surveying, environmental permitting, and base trail grade construction. The Town and ETA will contract with such contractors as they deem appropriate for the trail design, permitting and construction, and Developer will attempt to facilitate the Town’s and ETA’s contracting with Developer’s engineers and contractors if requested by the Town and ETA.

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- D. The Town and the ETA and their agents with their Trail construction and maintenance equipment shall have the right of prudent and careful access across the Property for Trail construction and maintenance related purposes, subject to the following conditions and covenants. Such access, maintenance and construction shall minimize disruption to Developer and to any residents of Hillcrest Retirement Community, as the community may be expanded. Access shall be over established roads if reasonably possible. Without Developer's written consent, no single Trail construction project or phase will exceed one year in duration. The holders, jointly and severally, will be responsible for and repair any damage caused to the Property and indemnify, defend and hold harmless Developer from any claims arising from its construction of the trail on the Property, except that nothing in this Agreement or in said Eastern Trail easement shall be construed to waive any immunity against the claims of others available to the Town under the Maine Tort Claims Act or other applicable law.

10. Route 1 Corridor Improvements. The Route One Section which abuts U.S. Route 1 is located at prominent position at the commencement of a significant entrance into the Town. In consideration of the Town's willingness to enter into this Agreement, Developers agree to make certain significant changes to such property along Route 1 so to improve its visual appearance from U.S. Route 1, such changes being referred to as the "Route 1 Corridor Improvements." Developers' agreement to make the Route 1 Corridor Improvements has been a material inducement to the Town to enter into this Agreement. The Route 1 Corridor Improvements shall be in the area shown on Exhibit B and of the type and scope shown there, with the final design of such improvements to be as determined and approved by the Planning Board during its considerations on final Site Plan review of the Expansion Project. The Route 1 Corridor Improvements shall be completed before the issuance of any certificate of occupancy for a manufactured home in the Expansion Project.

11. Commencement/Phasing Schedule/Bonding. Unless extended by the Town Council, the construction of the initial Phase shall commence within two (2) years after Developers' receipt of final land use approvals for Phase I of the Property. If changes of site plan or subdivision approvals are needed for development of subsequent Phases, such changes shall be subject to approval of the Planning Board and, if appropriate by the Town Council, all in accordance with Section 8 above. The Phases I, II, III and IV shall be completed in that order. Multiple phases may be pending and under construction at the same time. Developer shall be required to periodically update the Town with respect to commencement schedules of the next phase to be constructed in order to facilitate orderly planning on part of the Town.

As shown on Exhibit A, the northern access/egress road shall be constructed prior to any residential manufactured home being placed on any lot in Phase III or Phase IV.

Owners need only post a performance guaranty assuring the completion of public improvements for those improvements to be constructed within each Phase or which are to be completed in conjunction with such Phase under this Agreement. For the purposes of a performance guaranty, the Route 1 Corridor Improvements shall be required to be completed in conjunction with Phase I. For purposes of measuring the required date for completion of public improvements under the Town of Scarborough Subdivision Ordinance, the start date for the running of the period of completion shall commence with the commencement of physical construction of each Phase.

12. General

A. Developers shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after its execution by the Town Manager. The Town Manager shall sign the full size copy of the plan attached hereto as Exhibit A, marked with the legend:

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“Exhibit A to Hillcrest Retirement Community Expansion Contract Zoning Agreement dated November 3, 2004, subject to final Planning Board Subdivision and Site Plan Approvals pursuant to said Agreement.”

B. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property, and this Contract Zoning Agreement may be amended by future written agreement among the Town of Scarborough and the Developers or their successors in interest without need for approval of any other party.

C. The provisions of this Contract Zoning Agreement, including as applicable reference to and incorporation of the provisions of the Ordinance’s Resource Protection (R-P) District, shall operate as the sole zoning requirements upon the Property. Except as otherwise set forth in the aforesaid conditions, the regulations adopted by the State of Maine concerning the regulation of manufactured housing pursuant to 30-A M.R.S.A. §§4358, et seq., as amended hereafter, shall apply to the Property. The parties acknowledge the provisions of 30-A M.R.S.A. §4358.3.M. that “a municipality shall permit mobile home parks to expand and to be developed in a number of environmentally suitable locations in the municipality with reasonable consideration being given to permit existing mobile home parks to expand in their existing locations,” and agree that the expansion of Hillcrest Retirement Community permitted by this Agreement satisfies the Town’s obligation, if any, pursuant to such statutory provisions and that the Town has no obligation under the statute to allow further expansion.

D. The restrictions, provisions and conditions of this Agreement are an essential part of the rezoning, shall run with the Property, shall bind Developers, their successors in interests and assigns of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Scarborough.

E. 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 this Agreement. In the event that Developers or their successors or assigns fail to develop the Expansion Project in accordance with this Contract, or in the event of any breach thereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if Developers, their successors or assigns, fail to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such remedy or cure to completion in a reasonable time, then the Town may enforce the performance of this Agreement and recover the costs and expenses of performance from such Developers or their heirs, successors or assigns violating this Agreement, which recovery may include the Town’s reasonable attorney’s fees and expenses.

F. All references in this Agreement to the Scarborough Zoning Ordinance, the Scarborough Shoreland Zoning Ordinance, the Scarborough Subdivision Ordinance and other ordinances, and provisions and classifications thereof shall be and mean the Zoning Ordinance, Shoreland Zoning Ordinance, Subdivision Ordinance, other ordinances, and the provisions and classifications thereof in effect as of the date of adoption of this Agreement.

WITNESS:

TOWN OF SCARBOROUGH
By: _____
Ronald Owens, Town Manager

WITNESS:

DEVELOPERS

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Agnes Desfosses

WITNESS:

Theresa Desfosses

WITNESS:

By: _____

State Manufactured Homes, Inc.,

Its President

Exhibit 1- Zoning Map Change Amendment

Exhibit A- Summary Expansion Zone Plan

Exhibit B- Route 1 Corridor Improvements

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