

EXHIBITS

**EXHIBIT 2**

**CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
ROBERT TGETTIS AND LUCINDA P. MALBON**

This is a Contract Zoning Agreement made as of the 6th day of January 1997, 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 Robert Tgettis and Lucinda P. Malbon of Scarborough, Maine, (“Tgettis and Malbon) pursuant to the Contract Zoning provisions of Section II, Subsection I of the Scarborough Zoning Ordinance.

WHEREAS, Tgettis and Malbon are owners of real estate located at 311 Beech Ridge Road in Scarborough, Maine consisting of approximately 9.6 acres, as shown on attachment 1 (the “Property”); and

WHEREAS, the Property is currently in a Rural Residence and Farming District (R-F) under the Scarborough Zoning Ordinance; and

WHEREAS, the Rural Residence and Farming District R-F presently allows a number of non-residential uses, including retail sales of farm produce in connection with farming operations, kennels, hospitals, nursing homes and sanatoria, family day care homes, golf courses, municipal buildings and uses, public utility facilities, cemeteries, extractive industry, camping and tenting areas, non-commercial model aviation flying fields, cross country ski areas and day care center facilities; and

WHEREAS, Tgettis and Malbon wish to expand their existing skin and nail care business within the existing structure on the Property, which is currently operating as a home occupation; and

WHEREAS, the portion of the lot which abuts Beech Ridge Road is extensively wooded and, the existing vegetation, together with appropriate landscaping, will provide effective screening and buffering for the use; and

WHEREAS, Tgettis and Malbon have requested a rezoning of the Property lot to permit the expansion of the existing skin and nail care business beyond the scope allowable as a home occupation; and

WHEREAS, the Scarborough Planning Board, pursuant to Section II, Paragraph G, Subsection 3 of the Zoning Ordinance and 30-A M.R.S.A. §4352(8), after notice and hearing and due deliberation thereon, recommends the rezoning of the Property as set forth in this contract; and

WHEREAS, the Town of Scarborough, by and through its Town Council, has determined that the 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 January 6, 1997.

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, by adopting the map change amendment shown on Attachment 1.
2. Tgettis and Malbon are authorized to operate a skin and nail care business at the Property, consisting of the existing two story structure and new paved parking and driveway areas. The initial phases will be constructed within one year after execution of this agreement. Operation of the facility shall be subject to the following conditions:
  - (a) The maximum allowable building footprint for the building shall be 2,200 s.f. and the maximum building height shall be two stories.

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- (b) The uses allowed on the Property shall be skin and nail care, and those uses otherwise allowable in the Rural Residence and Farming District R-F.
- (c) Building design, style and materials shall be residential in appearance, with no substantial exterior changes from the existing structure.
- (d) The Property shall be landscaped to enhance the general appearance of the project from Beech Ridge Road 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 Tgettis and Malbon or their successors in interest in the Property.
- (e) With the exception of emergency situations, the hours during which the nail and skin care business may be open to the public shall be limited to between 7:00 a.m. and 9:00 p.m. Monday through Saturday.
- (f) Vehicular access between Beech Ridge Road and the Property shall be from one driveway only, located approximately in the location of the existing driveway, the exact location to be determined by the Planning Board at the time of site plan approval.
- (g) The number of persons providing skin and nail care to customers on the Property shall not exceed eight at any time.
- (h) The Property shall be developed and used only in accordance with the site plan approved by the Scarborough Planning Board on December 9, 1996, 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 the skin and nail care business; and
  - (ii) Relocation of any outdoor parking areas to any part of the site other than shown on the original approved site plan.
- (i) As used in this Contract Zoning Agreement, the term “skin and nail care” includes:
  - (i) manicure and pedicure treatments, meaning applying the hands or mechanical or electrical apparatus with or without cosmetic preparations, locations, creams or antiseptics to cut, trim, shape polish, color, or trim or apply artificial nails to the nails of any person or to massage, cleanse or beautify the hands or feet of any person, including application of nail art;
  - (ii) skin treatments, meaning beautifying, massaging, cleansing, stimulating, toning, or manipulating or exercising the skin of the human body by the use of cosmetic preparations, tonics, lotions, creams, antiseptics, or clays or any device electrical or otherwise, for the care of the skin, including facial treatments;
  - (iii) coloring treatments, including applying makeup or eyelashes, to the eyelashes or eyebrows;
  - (iv) hair removal, by wax treatments, electrolysis or other means;
  - (v) massage therapy as defined in state statute, 32 M.R.S.A. § 14302(4), administered by a massage therapist certified under the state statute and licensed under the Town of Scarborough Massage Establishment Ordinance; and,
  - (vi) any

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other procedures, techniques or advancements for accomplishing the treatments above which may in the future become generally accepted and recognized in the fields of skin and nail care. The term “skin and nail care” does not include arranging, dressing, curling, waving, cleansing, cutting, trimming, singeing, bleaching or similarly treating human hair wigs, wiglets or hairpieces.

(i) This addendum shall not prevent the practice of massage therapy on the premises by Amy Cousins, a registered massage practitioner employed on the premises at the time of approval of this addendum. (Addendum, made as of the 3<sup>rd</sup> day of December between the Town of Scarborough and Robert Tgettis and Lucinda P. Malbon dated January 6, 1997 adding the new term “skin and nail care”).

3. Tgettis and Malbon 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 Tgettis and Malbon or their 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 R-F Zoning District shall apply. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind Tgettis and Malbon, their heirs, 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.
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 of Scarborough and any applicable amendments thereto or replacement thereof.
7. In the event that Tgettis and Malbon or their heirs, successors or assigns fail to use the Property in accordance with this Contract Zoning Agreement, or in the event of any other breach hereof, this Contact Zoning 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.

WITNESS:

/s/ Laurel R. Nadeau

/s/ Laurel R. Nadeau

/s/ Laurel R. Nadeau

TOWN OF SCARBOROUGH

/s/ Carl Betterley

Its Town Manager (duly authorized by vote  
of the Scarborough Town Council on January 6, 1997)

/s/ Robert Tgettis

/s/ Lucinda P. Malbon

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**FIRST AMENDMENT TO EXHIBIT 2  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
ROBERT TGETTIS AND LUCINDA P. MALBON**

This First Amendment to Contract Zoning Agreement (hereinafter, this "Amendment") is made as of the 19<sup>th</sup> day of September, 2007, 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 Robert Tgettis and Lucinda P. Malbon of Scarborough, Maine, ("Tgettis and Malbon) pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the "Zoning Ordinance").

WHEREAS, Tgettis and Malbon entered into a Contract Zoning Agreement with the Town dates as of the 6<sup>th</sup> day of January 1997 (hereinafter, this "Agreement") creating Contact Zoning District Number II (hereinafter, the "District") as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 12903, Page 122; and,

WHEREAS, Tgettis and Malbon wish to expand their existing skin and nail care business on the Property; and,

WHEREAS, Tgettis and Malbon have requested that the Town approve this Amendment to the Agreement; (a) modifying the number of employees allowed; (b) adding administrative staff; (c) adding to the overall square footage of structure footprint; and (d) adding separate parking for employees.

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

1. Section 2(a) is amended to read as follows: "The maximum allowable building footprint for the building shall be 2,200 square feet plus a maximum of 335 square feet for a rear porch and stair area measuring approximately 29.6 feet by 11.2 feet, and the maximum building height shall be two stories."
2. Section 2(g) is amended to read as follows: "The number of persons providing skin and nail care to customers on the Property shall not exceed twelve at any time; this limit does not include the owner/manager or administrative staff who do not perform skin and nail care services."
3. A new Section 2(j) is added to read as follows: "Upon approval of an amended site plan by the Scarborough Planning Board, Tgettis and Malbon are authorized to add a separate employee parking area measuring approximately 90 feet by 60 feet with a 25 foot by 25 foot hammerhead turnaround."
4. Except as specifically amended herein, all terms and conditions of the original Contract Zoning Agreement shall remain in full force and effect.
5. Tgettis and Malbon shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

/s/ Laurel R. Nadeau

TOWN OF SCARBOROUGH:

/s/ Ronald W. Owens, its Town Manager

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(duly authorized by vote of the Scarborough Town Council on September 19, 2007)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

September 25, 2007

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

Before me,

/s/ Yolande P. Justice, Notary Public

**SECOND AMENDMENT TO EXHIBIT 2  
CONTRACT ZONING AGREEMENT  
BETWEEN THE TOWN OF SCARBOROUGH AND  
ROBERT TGETTIS AND LUCINDA P. MALBON**

This Second Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the October 4, 2017 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 Robert Tgettis and Lucinda P. Malbon of Scarborough, Maine, (“Tgettis and Malbon”) pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, Tgettis and Malbon entered into a Contract Zoning Agreement with the Town dated as of the 6th day of January 1997, subsequently amended by an amendment dated September 19, 2007, (hereinafter, this “Agreement”) creating Contract Zoning District Number II (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 12903, Page 122; and,

WHEREAS, Tgettis and Malbon wish to expand their existing skin and nail care business on the Property to include hair care; and,

WHEREAS, Tgettis and Malbon have requested that the Town approve this Amendment to the Agreement to allow hair care as an approved service.

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

1. Section 2 is amended to insert hair care as an allowable use, to read as follows: “Tgettis and Malbon are authorized to operate a skin, hair and nail care business at the Property....”
2. Section 2(b) is amended to read as follows: “The uses allowed on the Property shall be skin, hair and nail care, and those uses otherwise allowable in the Rural Residence and Farming District.”
3. Section 2(h)(i) is amended to read as follows: “Any increase in the square footage of the area utilized for the skin, hair and nail care business, and”
4. Section 2(h)(i) is amended to read as follows: “As used in this Contract Zoning Amendment, the term skin, hair and nail care includes:”
5. Section 2(h)(i)(i) is amended to insert “hair care” as an allowable use, and will read as follows: “(i) manicure and pedicure treatments, meaning applying the hands or mechanical or electrical apparatus with or without cosmetic preparations, lotions, creams, or antiseptics to cut, trim, shape, polish, color, or trim or apply artificial nails to the nails of any person or to massage, cleanse or beautify the hands or feet of any person, including application of nail art; (ii) skin treatments, meaning beautifying, massaging, cleansing, stimulating, toning, or manipulating or exercising the skin of the human body by the use of cosmetic preparations, tonics, lotions, creams, antiseptics, or clays or any device electrical or otherwise, for the care of skin, including facial treatment; (iii) coloring treatments, including applying makeup or eyelashes, to the eyelashes or eyebrows; (iv) hair removal, by wax treatments, electrolysis or other means; (v) massage therapy as defined in state statute, 32 M.R.S.A. § 14302(4), administered by a massage therapist certified under the state statute and licensed under the Town of Scarborough Massage Establishment Ordinance; and (vi) hair care (vii) any other procedures techniques or advancements for accomplishing the

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treatment above which may in the future become generally accepted and recognized in the fields of skin, hair and nail care.”

- 6. Section 2 (h)(i)(i) is further amended to delete the following sentence: “The term “skin and nail care” does not include arranging, dressing, curling, waving, cleansing, cutting, trimming, singeing, bleaching or similarly treating human hair wigs, wiglets or hairpieces.”
- 7. The sole intent of this amendment is to allow hair care as an acceptable use. Except as specifically amended herein, all terms and conditions of the original Contract Zoning Agreement, as amended, shall remain in full force and effect.
- 8. Tgettis and Malbon shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

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

WITNESS:

\_\_\_\_\_

TOWN OF SCARBOROUGH

\_\_\_\_\_  
Thomas J. Hall, its Town Manager  
(duly authorized by vote of the Scarborough  
Town Council on \_\_\_\_\_, 2017)

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

\_\_\_\_\_, 2017

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

Before me,

\_\_\_\_\_  
Notary Public/Attorney-At-Law

\_\_\_\_\_  
Print Name