

LAND USE

120 Attachment 9

Town of Windham

**Appendix I
Mallison Falls Contract Zone**

MALLISON FALLS

CONTRACT ZONING AGREEMENT

This Contract Zoning Agreement (this "Agreement") made this 28th day of July, 2015 (the "Effective Date"), by and between the **TOWN OF WINDHAM**, a body corporate and politic, located in the County of Cumberland and State of Maine (the "Town") with a mailing address of 8 School Road, Windham, Maine and **MALLISON FALLS, LLC**, a Maine limited liability company with a mailing address of 55 Hardy Road, Falmouth, Maine 04105 (the "**DEVELOPER**").

WITNESSETH

WHEREAS, the Town is authorized to enter into contract zoning agreements pursuant to the Windham Shoreland Zoning Ordinance (Section 199-8(B)(2), the provisions of the Windham Land Use Ordinance incorporated therein by reference (Section 140-5.1)(*Renumbered to Sec. 108 as of October 22, 2009*), and the provisions of 30-A M.R.S.A. Section 4352(8);

WHEREAS, the Developer either owns or has entered into contracts to purchase parcels of real estate located at 3 and 4 Mallison Falls Road, Windham, Maine, consisting of approximately 6.3 acres, generally being shown on the Town's Tax Map 3, Lots 7 and 8, all of which property is shown on the attached Exhibit A (the "Property");

WHEREAS, the Property is currently located in the Village Commercial (VC) and Shoreland Zone General Development (GD) Zoning Districts, as further described in the Land Use Ordinance, Chapter 140, from the Code of the Town of Windham (the "Ordinance");

WHEREAS, the Developer proposes to redevelop three existing buildings on the Property into residential dwelling units and add two new residential buildings (the "Project");

WHEREAS, the Town's Comprehensive Plan cites the need and potential for expanding high density residential development while maintaining the historical heritage of the Town;

WHEREAS, the Town's Comprehensive Plan includes the creation of a designated growth zone in South Windham across the Presumpscot River from Gorham;

WHEREAS, the Developer is proposing to create a high density residential development on the Property within the designated growth zone in South Windham;

WHEREAS, the Developer further seeks to improve river access on the Property consistent with the open space and recreational resources objective of the Comprehensive Plan;

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WHEREAS, Developer intends to remediate existing environmental conditions at the Project site in keeping with the proposed residential use of the Property;

WHEREAS, the rezoning provided in this Agreement is therefore consistent with the Windham Comprehensive Plan; and

WHEREAS, the Town, by and through its Town Council, has determined that said rezoning would be consistent with the Town's Comprehensive Plan adopted pursuant to Title 30-A, Maine Revised Statutes, Chapter 187, Sub-part 6-A, and consistent with the existing and permitted uses within the VC and GD zoning districts and has authorized the execution of this 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 Windham by adopting the zoning map change amendment shown on Exhibit A-1.
2. **Mallison Falls Contract Zoning District.** The Town hereby creates a Mallison Falls Contract Zoning District as defined herein which shall apply to the Property. For purposes of this Agreement, the Mallison Falls Contract Zoning District means a residential development that involves redeveloping three existing buildings on the Property into residential dwelling units and constructing two new residential buildings to the Property (thus creating five buildings of residential dwelling units) as further set forth in this Agreement.
3. **Permitted Densities, Uses and Dimensional Criteria.**
 - a. ***Density:*** The density of the Project shall be as follows:
 - i. Up to 110 dwelling units to be located in 5 buildings on the Property.
 - b. ***Uses.*** The permitted uses in the Project shall be:
 - i. Residential Dwelling Units;
 - ii. Maintain current use of the Property as commercial and residential mixed use; and,
 - iii. Accessory Uses.
 - c. ***Residential dimensional, Parking criteria, and design criteria:***
 - i. Lot Size: No restriction on lot size or number of Dwelling Units per lot, subject to the overall limit of 110 dwelling units for the Project.
 - ii. Minimum front Setbacks all buildings: same as underlying district.
 - iii. Minimum side Setbacks all buildings: same as underlying district.

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- iv. Minimum rear Setbacks all buildings: zero feet.
 - v. Height: 43 feet, not to include subsurface parking, measured from the mean "as completed" grade to the highest point on the roof for all buildings as the now exist or shall be constructed in the future.
 - vi. Stormwater. No restriction as to the flooding requirements for stormwater runoff.
- d. **Parking.** Parking shall meet the requirements as set forth Section 812(C)(2), Table 2 of the Ordinance, except that there shall be no setback requirements for parking spaces or travel aisles from the property line.
4. **Contract Zone Plan.** The Property shall be generally developed and used in accordance with the Contract Zone Plan, reduced copies of which are attached hereto as Exhibit B, as it may be further approved and amended from time to time pursuant to the provisions of the Windham Site Plan Ordinance and Subdivision Ordinance and this Agreement (the "Contract Zone Plan"). Notwithstanding any other provisions of the Ordinance, the physical layout, dimensions, setbacks, parking, and proposed uses and improvements shown on the Contract Zone Plan, as they may be varied, shall be permitted under the Ordinance.
5. **General.**
- a. Owners shall record this Agreement in the Cumberland County Registry of Deeds within 30 days after receipt of final land use approvals for the development on the Property.
 - b. The provisions of this Agreement shall be deemed restrictions on the use of the Property, and this Contract Zoning Agreement may be amended by future written agreement between the Town of Windham and the Owner affected or its successors in interest without need for approval of any other party. In the event all or any portion of the Property is subjected to the Maine Condominium Act (33 M.R.S.A. Section 1601-101 et seq.), then the Association organized may act on behalf of all condominium owners.
 - c. The provisions of this Agreement shall operate as an "overlay" zone and all other requirements of the underlying Zoning District shall apply except as otherwise set forth herein.
 - d. The restrictions, provisions and conditions of this Agreement are an essential part of the rezoning, shall run with the Property, shall bind the Developer, its 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.
 - e. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, the provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

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- f. No waiver of any of the terms of this Agreement and no extension thereof will be deemed to have occurred, or to be effective unless in writing signed by the parties. No course of dealing heretofore or hereafter between the parties, or any failure or delay on the part of any party in exercising any rights or remedies under this Agreement shall operate as a waiver or preclusion of the exercise of any rights or remedies under this Agreement.
- g. **Enforcement.** This Contract Zoning Agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and the Shoreland Zoning Ordinance. Following any determination of a zoning violation by the Court or the Code Enforcement Officer, the Town Council, after recommendation of the Planning Board, may amend, modify or rescind its contract rezoning of the Property. In the event that the Property Owner or its successors or assigns fail to maintain and operate the Property in accordance with this Agreement, or in the event of any other breach of any condition set forth in this Agreement, the Town Council shall have the authority, after hearing, to resolve the issue resulting in the breach or the failure to maintain or operate.

[Signatures on Following Page]

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Witness our hands and Seals on 2/2, 2016.

TOWN OF WINDHAM

Witness

by: _____
Anthony T. Plante, Town Manager

MALLISON FALLS, LLC
By: Hardypond Development
Company LLC, its Managing Member
by: _____
Robert J Gaudreau, its Managing
Member

Witness

STATE OF MAINE
COUNTY OF CUMBERLAND

2/2, 2016

Then personally appeared before me the above-named Anthony T. Plante Town Manager, and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of Town of Windham, Maine

LINDAS. MORRELL
Notary Public – Maine
My Comm. Expires April 12, 2016

Notary Public
Print Name: Linda S. Morrell
My Commission Expires: 4-12-2016

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2015

Then personally appeared before me the above-named Robert J. Gaudreau, Managing Member of Hardypond Development Company, LLC, the Managing Member of Mallison Falls, LLC and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of Mallison Falls, LLC.

Notary Public/Attorney-at-Law
Print Name: _____
My Commission Expires: _____

DAPHNE MILLAY
Notary Public Maine
My Commission Expires August 14, 2018

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Exhibit A [The Property]

A certain tract of land with the buildings thereon and mill privileges connected therewith situated in Windham, in the County of Cumberland and State of Maine, at Mallison Falls, so-called, bounded and described as follows, to wit:

Beginning at an iron stake set in the northerly sideline of Mallison Street, said iron stake marking the southwesterly corner of the lot or parcel of land conveyed by Maine Steel, Inc. to Baker Ice Machine Co., Inc., by deed dated October 1, 1946, and recorded in Cumberland County Registry of Deeds in Book 1847, Page 204; thence running South $48^{\circ} 10'$ East 67.45 feet, more or less, to a point at the shore end of an old abutment in the east bank of the Presumpscot River south of the highway bridge over said river; thence South $7^{\circ} 28'$ East 110.04 feet to a point six feet northwesterly of the "Cloth Building" so-called, on the premises herein conveyed; thence South $30^{\circ} 13'$ East 61.49 feet by a line parallel with and six feet westerly from said Cloth Building to the southerly or downstream side of the existing dam structure; thence South $55^{\circ} 30'$ West 33.45 feet by a line parallel with and six feet northerly from the "Dye House" so-called, on the premises herein conveyed; thence South $8^{\circ} 54'$ East 19.84 feet by a line parallel with and six feet northwesterly from said Dye House; thence South $59^{\circ} 25'$ West 28.19 feet by a line parallel with and six feet northwesterly from said Dye House; thence South $30^{\circ} 46'$ East 127.7 feet by a line parallel with and six feet southwesterly from said Dye House to a point in the prolongation of the southeasterly line of said Dye House; thence South $43^{\circ} 41'$ East 114.02 feet to a point six feet distant southwesterly from the pump house in the rear of the machine shop on the premises herein conveyed; thence South $36^{\circ} 58'$ East 328.4 feet to a 20 inch beech tree; thence South $15^{\circ} 9'$ East 561.9 feet to an iron hub in the southerly boundary line of the premises herein conveyed, said hub being near the easterly bank of said river; thence turning and running North $82^{\circ} 55'$ East through the center of a white birch tree about 30 or 40 feet westerly from the location line of the Maine Central Railroad Mountain Division as now constructed and continuing in the same course to a point 28 feet westerly from the center line between the rails of said railroad; thence turning and running in a northerly direction on a line 28 feet westerly of the center line between the rails of said railroad a distance of 1461 feet more or less to an iron stake set in the northerly side of Mallison Street, said iron stake marking the southeasterly corner of the lot of land conveyed by deed from Maine Steel, Inc. to Baker Ice Machine Co., Inc. by said deed dated October 1, 1946; thence in a westerly direction and along the northerly side of said Mallison Street to land now or formerly of the Cumberland County Power and Light Company and the point of beginning.

Also another certain lot or parcel of land with the buildings thereon situated in Windham, in said County of Cumberland and State of Maine near Mallison Falls, so-called, bounded and described as follows:

Beginning at a stone monument 100 feet easterly of the east bank of the Presumpscot River at the northerly boundary of the premises herein conveyed and at a point 118.3 feet from the center line between the rails of the Maine Central Railroad Mountain Division as now constructed; thence running in a southwesterly direction a distance of 130 feet more or less to a stone monument; thence turning at an angle and running S $48^{\circ} 10'$ E 179.85 feet more or less to an iron stake on the northerly side of Mallison Street; thence easterly along said Mallison Street 75 feet more or less to an iron stake, said stake being 28 feet westerly of the center line between the rails of the Maine Central Railroad Mountain Division as now constructed; thence turning and running in a

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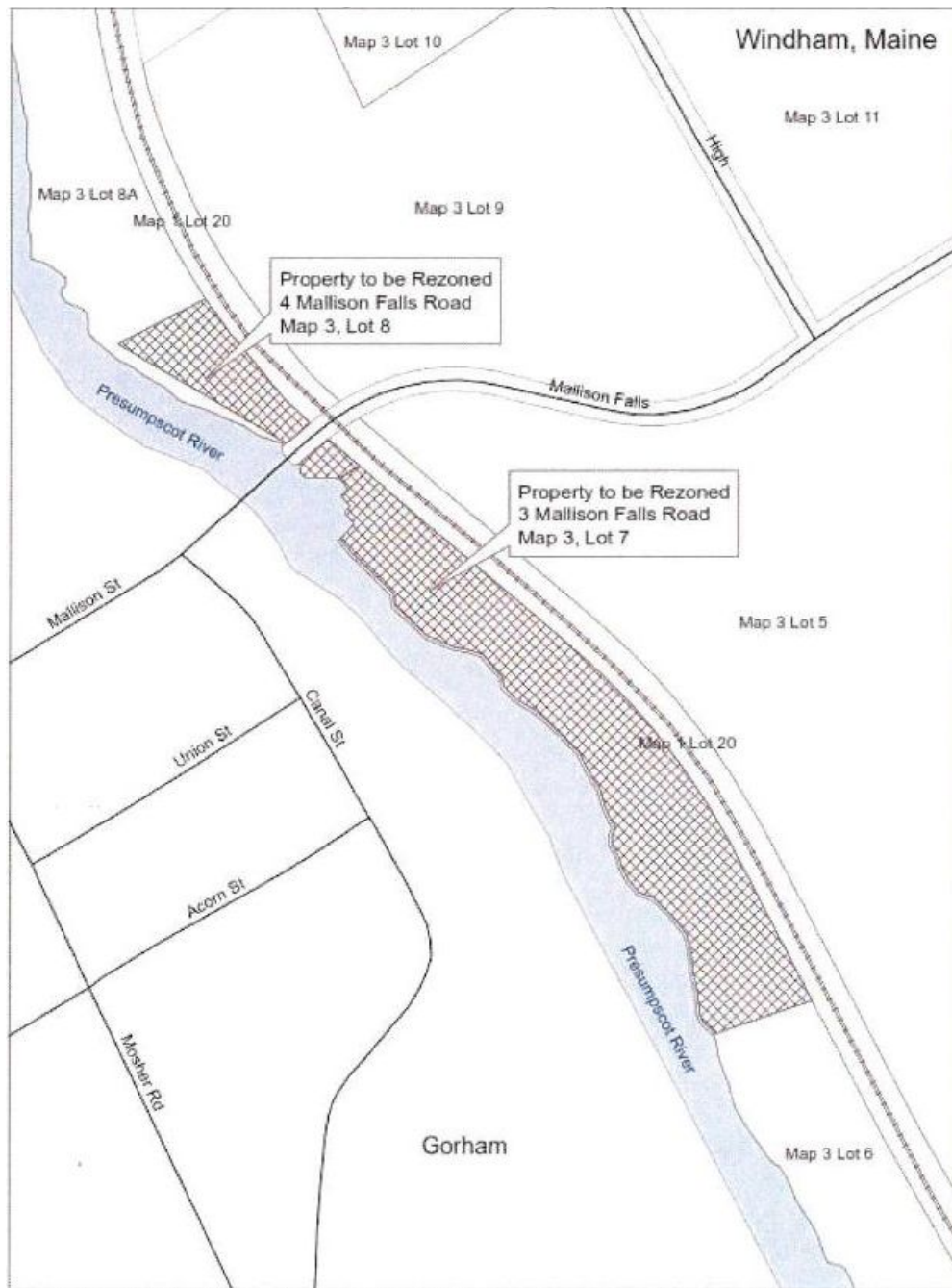
northerly direction on a line 28 feet westerly of the center line between the rails of said railroad 277 feet more or less to an iron stake set in the ground; thence turning at an angle and running South $74^{\circ} 5' W$ across a stone monument a distance of 90.3 feet and to the point of beginning.

Also another certain lot or parcel of land situated near Mallison Falls in the Town of Windham, County of Cumberland and State of Maine, said lot or parcel of land being more particularly bounded and described as follows:

Beginning at a certain stone monument near the Easterly bank of the Presumpscot River, said monument being 100 feet South $74^{\circ} 05' W$ of the stone monument which marks the Northwesterly corner of the lot which was conveyed by Maine Steel, Inc. to Baker Ice Machine Co., Inc. by deed dated October 1, 1946; thence running N $74^{\circ} 05' E$ a distance of 100 feet to said stone monument and land acquired by Baker Ice Machine Co., Inc. from Maine Steel, Inc.; thence turning and running Southwesterly along the Westerly boundary of the lot of land conveyed to Baker Ice Machine Co., Inc. by Maine Steel, Inc. by deed dated October 1, 1946, 130 feet more or less to a stone monument and land now or formerly of the Cumberland County Power and Light Company, said stone monument marking the Westerly corner of said lot or parcel of land conveyed by Maine Steel, Inc. to the Baker Ice Machine Co., Inc. by deed dated October 1, 1946; thence turning and running N $48^{\circ} 10' W$ along land now or formerly of the Cumberland County Power and Light Company 150 feet to the point of beginning,

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Exhibit A-1 [Amended Zoning Map]



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Exhibit B [Contract Zone Plan]

