

**FIRST READING DRAFT CONTRACT REZONING AGREEMENT
CITY of BELFAST CODE of ORDINANCES**

**CITY OF BELFAST CITY COUNCIL
APPLICANT: WHITECAP BUIDLERS (DANIEL WALDRON)
PROJECT: THREE TIDES RESTAURANT RENOVATION
LOCATION: MAP 11, LOT 141B**

1) Parties to Agreement.

Applicant: WhiteCAP Builders (hereinafter 'Applicant')
ATTN: Daniel J. Waldron, President
15 Evergreen Ridge Road
BelAfast, ME 04915

City: City of Belfast (hereinafter 'City')
131 Church Street
Belfast, Maine 04915

2) Description and Location of Property.

WhiteCAP Builders (hereinafter Applicant) has entered an agreement with Chip and Mena Holmes, owners of the former Three Tides Restaurant property located at 2 Pinchy Lane, Map 11, Lot 141B, to lease the property. The Applicant is proposing a series of renovations to the property and to re-establish its use as a restaurant. The main renovations include: converting the former residence located on the upper-most floor (3rd floor) of the building to restaurant seating, including using the outside deck for seating; creating new stair halls to provide customer access to the second and upper floors of the restaurant; making changes to the design of the building by replacing existing façade materials and adding a new series of windows; and making changes to the interior of the building, such as adding a new restroom on the upper floor and a commercial kitchen and a walk-in cooler on the second floor.

The Three Tides Restaurant and accompanying improvements have been located on this property since 2002. The property is 9,583 square feet in size (.22 acres) and it has 105.4 ft of frontage on the public right-of-way for the Belfast Harbor Walk, and it has 66 feet of shore frontage. While the address of this property is 2 Pinchy Lane, the property does not have any street frontage on the nearest street, Marshall's Wharf. The property owner and former operators of the Three Tides Restaurant have used Marshall's Wharf to provide vehicular access to the property.

3) Applicant Request and Purpose of Contract Rezoning Agreement.

The Three Tides property is located in the Waterfront Mixed Use 2 zoning district and the Waterfront Development shoreland district. The Belfast City Council, in October 2014,

adopted amendments to the City Code of Ordinances, Chapter 102, Zoning, and Chapter 82, Shoreland, to allow the potential use of contract rezoning for a property located in this zoning and shoreland district. Pursuant to the 2014 Ordinance amendments, reference Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use Zoning Districts and Waterfront Development Shoreland District, an applicant whose property is located in the Waterfront Mixed Use 2 zoning district may voluntarily request to apply for a contract rezoning agreement.

The Applicant proposal to re-establish the Three Tides Restaurant is a permitted use in both the Waterfront Mixed Use 2 zoning district and the Waterfront Development shoreland district. The main reason the Applicant is pursuing a contract rezoning agreement is because the proposed renovations to the Three Tides Restaurant building result in the Applicant not being able to satisfy dimensional standards for the Waterfront Mixed Use 2 zoning district; both the front structure setback requirement of 10 feet, and the side structure setback requirement of 5 feet (one side of the building). In addition, the Applicant is requesting to construct a small portion of a new stair hall, both the foundation for the stair hall and the overhang of the eaves, within the bounds of the City owned right-of-way for the Belfast Harbor Walk.

4) City Code of Ordinance Requirements.

The Belfast City Council determined that the City has the authority to consider the Applicant proposal to develop and occupy this property pursuant to terms of a contract rezoning agreement. The Council considered the provisions of the applicable City Code of Ordinances and the recommendations of the City of Belfast Planning Board and Belfast Intown Design Review Committee in determining that the Applicant project is an allowed use and that it satisfies applicable Ordinance requirements, subject to terms of this Contract Rezoning Agreement. The Council considered the following Ordinances:

- a) Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use Zoning Districts and the Waterfront Development Shoreland District. The Council specifically found that Section 102-1451(b) establishes that the Applicant property qualifies to request the issuance of a contract rezoning agreement. The Council concurred with the Belfast Planning Board that the Applicant's request for relief from certain dimensional (setback) requirements that apply to the Waterfront Mixed Use 2 Zoning District warrants City consideration of issuing a contract rezoning agreement.
- b) Chapter 102, Zoning, Article V, District Regulations, Division 9, Inside the Bypass Zoning Districts, Section 102-461, Table of Uses, and Section 102-470, Dimensional Table, for the Waterfront Mixed Use 2 zoning district. The Council concurred with the recommendation and finding of the Belfast Planning Board that a restaurant with inside and outside seating is a permitted use, and that the property complies with applicable dimensional requirements, subject to the structure setback relief granted through this Agreement.
- c) Chapter 82, Shoreland. The Council concurred with the recommendation and finding of the Belfast Planning Board that the property is located in the Waterfront

Development Shoreland District and that the Applicant proposal must comply with applicable Shoreland requirements.

- d) Chapter 90, Site Plan. The Council concurred with the recommendation and finding of the Belfast Planning Board that Chapter 90, Site Plan, applies to the project renovations proposed by the Applicant.
- e) Chapter 78, Floods. The Council concurred with the recommendation and finding of the Belfast Planning Board that Chapter 78, Floods, applies to the renovations proposed by the Applicant. The Three Tides Restaurant building is located in the AE zone, elevation 11, of the flood zone.
- f) Chapter 80, Intown Design Review. The Council concurred with the finding of the Belfast Planning Board that Chapter 80, Design Review, applies to the renovations proposed by the Applicant. The Intown Design Review Committee, pursuant to Step 2 of the Contract Rezoning process, conducted its review of the Applicant proposal at its meeting of June 18, 2020. The Planning Board and City Council considered the Committee's recommendations in making its decision on the requested contract rezoning agreement.
- g) Chapter 98, Technical Standards Ordinance. The Council concurred with the finding of the Belfast Planning Board that the Technical Standards provided guidance to both the Board and the Council in implementing goal statements identified in Chapter 102, Zoning, Article X.

5) Description of City Council Action (NOTE – Much of this language is a Prospective Statement. The Statement will be revised, as necessary, based on final Council action.)

The Belfast City Council conducted the public hearing and meetings associated with its review of the requested Contract Rezoning Agreement that are required by Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use Zoning Districts and the Waterfront Development Shoreland District. The Council conducted the First Reading of the proposed Agreement at its meeting of July 7, 2020, and conducted the Second Reading and accompanying public hearing at its meeting of July 21, 2020 **(Prospective Statement)**.

The Council, at its meeting of July 21, 2020, found **(Prospective Statement)** that the Applicant satisfied all requirements of Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use Zoning Districts and Waterfront Development Shoreland Districts, Sections 102-1450, 102-1451(b), 102-1453, and 102-1454, and voted at this same meeting to approve the Contract Rezoning Agreement for the property located at Map 11, Lot 141B. The Council found that the Applicant proposal satisfied all Section 102-1453(a) Mandatory Conditions for a Contract Rezoning Amendment (Agreement) that are stipulated in State Law, all Section 102-1453(b) Discretionary Conditions for a Contract Rezoning Agreement that are stipulated in the City Code of Ordinances, and that the project proposal is consistent with the Goal Statements stipulated in Section 102-1454. The Council, at its meeting of July 21, 2020, adopted a motion to approve the Applicant request for a Contract Rezoning Agreement. This Agreement grants the Applicant relief from certain structure setback requirements; reference Attachment A, Conditions of

Approval. Further, the terms of this Contract Rezoning Agreement shall replace and supersede terms of Use Permits and Site Plan Permits granted to David and Sarah Carlson, past owners and operators of the Three Tides Restaurant.

The Council authorized the City of Belfast City Manager to enter into (sign) this Agreement on their behalf.

6) Terms and Conditions of Approval

The Contract Rezoning Agreement is subject to Applicant compliance with the terms and conditions identified in Attachment A, City of Belfast Planning Board recommended Conditions of Approval, which the Planning Board reviewed and approved at its meeting of June 24, 2020, and as such were reviewed by the Council at its meetings of July 7 and July 21, 2020, and as such were approved by the City Council at its meeting of July 21, 2020.

7) Integration.

This Contract Rezoning Agreement, together with all attachments, represents the set of terms and conditions between the parties. No oral statements, promises or understandings may be relied upon by either party.

8) Assignment.

The City requires the Applicant to inform the City and obtain City approval, subject to terms identified in this Contract Rezoning Agreement, of any proposal or request to assign the terms of this Agreement to any other party. Such a request shall be considered an amendment to this Agreement.

9) Enforcement.

The following provisions shall apply to enforcement of the terms of this Contract Rezoning Agreement:

- a) The parties hereto acknowledge that this Agreement is enacted pursuant to and is an extension of the land use laws of the City of Belfast. The City may enforce any violation of the terms and conditions in the Contract Rezoning Agreement and all attachments hereto, pursuant to the relief, penalties and remedies, including injunctive relief, as contained in Title 30-A M.R.S 4452 and Rule 80K of the Maine Rules of Civil Procedure. Each day of violation shall be considered a separate violation. Provided, however, with the exception of emergency safety issues, no enforcement action shall take place unless the Applicant, or its heirs, successors and assigns, fails to substantially cure violations after receipt of written notice from the City demanding cure within 30 days of receipt of said notice by the Applicant or its heirs, successors and assigns; and

- b) Unless specifically displaced by the terms and conditions described herein, the Applicant, or its heirs, successors and assigns, shall comply with all performance standards, land use ordinances, and public health, safety and welfare ordinances of the City of Belfast, whether existing or to be enacted in the future.

10) Effective Date of Agreement.

The effective date of this Contract Rezoning Agreement shall be the date of its adoption by the City Council, July 21, 2020. This Agreement was adopted and signed by both the Applicant (Daniel Waldron, President) and the City (by Erin Herbig, City Manager) in July 2020.

The adoption of the Contract Rezoning Agreement and the accompanying Attachment A, Planning Board Recommended Conditions of Approval, is a legal land use decision of the City Council of the City of Belfast. Any appeal of this decision must be filed in the Waldo County Superior Court within 30 days in accordance with provisions of City Code of Ordinances, Chapter 102, Zoning, Section 102-1455.

ON BEHALF OF THE APPLICANT,

Dated: _____

Daniel F. Waldron

State of Maine
Waldo County, ss

Personally appeared before me the above-named Daniel F. Waldron, President, WhiteCAP Builders, and made oath that the above-stated facts are true based upon his knowledge, information and belief and to the extent that they are based upon information and belief, Daniel F. Waldron swears that he believes them to be true.

Before me,

Notary Public

Type or Print Name as Written

My Commission Expires:

ON BEHALF OF THE CITY OF BELFAST

DATED: _____
Erin Herbig

State of Maine
Waldo County, ss

Personally appeared before me the above-named Erin Herbig, City Manager, City of Belfast and made oath that the above-stated facts are true based upon her knowledge, information and belief and to the extent that they are based upon information and belief, Erin Herbig swears that she believes them to be true.

Before me,

Notary Public

Type or Print Name as Written

My Commission Expires:

**ATTACHMENT A
CITY of BELFAST PLANNING BOARD
RECOMMENDED CONDITIONS of APPROVAL**

**APPLICANT: WHITECAP BUILDERS (DANIEL WALDRON)
PROJECT: THREE TIDES RESTAURANT
LOCATION: 2 PINCHY LANE - MAP 11, LOT 141B**

1. Applicant:

WhiteCAP Builders (hereinafter Applicant)
Attn: Daniel F. Waldron, President
15 Evergreen Ridge Road
Belfast, ME 04915

2. Description of Property and Project:

WhiteCAP Builders, Daniel Waldron, President (hereinafter Applicant), has entered an agreement with Chip and Mena Holmes, owners of the former Three Tides Restaurant property located at 2 Pinchy Lane, Map 11, Lot 141B, to lease the property. The Applicant is proposing a series of renovations to the property and to re-establish its use as a restaurant. The main renovations include: converting the former residence located on the upper-most floor (3rd floor) of the building to restaurant seating, including using the outside deck for seating; creating new stair halls to provide customer access to the second and upper floor of the restaurant; making changes to the design of the building by replacing existing façade materials and adding a new series of windows; and making changes to the interior of the building, such as adding a new restroom on the upper floor and a commercial kitchen and a walk-in cooler on the second floor.

The Three Tides Restaurant and accompanying improvements have been located on this property since 2002. The property is 9,583 square feet in size (.22 acres) and it has 105.4 ft of frontage on the public right-of-way for the Belfast Harbor Walk, and it has 66 feet of shore frontage. While the address of this property is 2 Pinchy Lane, the property does not have any street frontage on the nearest street, Marshall's Wharf. The property owner and former operators of the Three Tides Restaurant have used Marshall's Wharf to provide vehicular access to the property.

3. Description of Planning Board Actions:

3.1 The Planning Board, at its meeting of June 24, 2020, acknowledged that the Belfast Design Review Committee met on June 18, 2020, to review the Applicant proposal pursuant to Step 2 of the Contract Rezoning process, and that the Committee prepared its recommendation to the Planning Board. The

Board, as identified in these Conditions (Condition 6), supported the recommendations of the Design Review Committee.

- 3.2 The Planning Board, at its meeting of June 24, 2020, conducted a public hearing on the Applicant proposal pursuant to Step 3 of the Contract Rezoning process. No public comment was offered at the public hearing. The Board found that the Code and Planning Department provided the required public notice of the public hearing to abutting property owners, and that the Department advertised notice of the hearing in the Republican Journal and posted such on the City website.
- 3.3 The Planning Board, at its meeting of June 24, reviewed all requirements in the City Code of Ordinances, Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use zoning districts and Waterfront Development Shoreland district, Chapter 90, Site Plan, Chapter 82, Shoreland, Chapter 78, Floods, and applicable Chapter 98, Technical Standards, and found that the proposed project complied with applicable requirements. The Board, at its meeting of June 24, 2020 adopted these proposed Conditions of Approval, Attachment A, and unanimously voted to recommend Council consideration of these Conditions of Approval.
- 3.4 The Planning Board, at its meeting -----, reviewed and adopted draft Findings of Fact regarding its ----- review of the Applicant proposal and decision to recommend these Conditions of Approval to the City Council. **(NOTE TO COUNCIL – The Planning Board will not be conducting its review of the final language for its Findings of Fact and voting on such until the Planning Board meeting of July 15, 2020.)**

4. Description of City Council Actions: NOTE TO COUNCIL: All of the language in Section 4 is prospective language and is subject to change based on decisions of the Council.

- 4.1 The City Council, at its July 7, 2020 First Reading of the proposed Contract Rezoning Agreement acknowledged the following:
 - a. That the Belfast Design Review Committee met on June 18, 2020 to review the Applicant proposal pursuant to Step 2 of the Contract Rezoning process, and that the Committee prepared its recommendations to the Planning Board and City Council; and
 - b. That the Belfast Planning Board met on June 24, 2020 to review the Applicant proposal pursuant to Step 3 of the Contract Rezoning process, and that the Board prepared its recommendations, including recommended Conditions of Approval, to the City Council.
- 4.2 The City Council, at its meeting of July 21, 2020, conducted a public hearing on the Applicant proposal pursuant to Step 4 of the Contract Rezoning process. Public comment **was/was not** offered at the public hearing. The Council found that the Code and Planning Department provided the required public notice of

the public hearing to abutting property owners, and that the Department advertised notice of the hearing in the Republican Journal and posted such on the City website.

4.3 The City Council, at its meeting of July 21, 2020, reviewed all requirements in the City Code of Ordinances, Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use zoning districts and Waterfront Development Shoreland district, reviewed the recommendations of the Belfast Planning Board and Design Review Committee, and voted to approve the issuance of a Contract Rezoning Agreement to the Applicant. Issuance of the Contract Rezoning Agreement is subject to Applicant compliance with these Attachment A, Conditions of Approval. This Agreement grants the Applicant relief from certain structure setback requirements; reference Attachment A, Conditions of Approval. Further, the terms of this Contract Rezoning Agreement shall replace and supersede terms of Use Permits and Site Plan Permits granted to David and Sarah Carlson, past owners and operators of the Three Tides Restaurant.

5. City/Planning Board Determination of Project Compliance with Use and Dimensional Requirements for the Waterfront Mixed Use 2 Zoning District and Waterfront Development Shoreland District, and Amendments to the City Ordinance Requirements Pursuant to this Contract Rezoning Agreement. (NOTE TO COUNCIL – Council must make a decision on the amount of structure setback from the Harbor Walk right-of-way, two options are presented by the Planning Board).

The Planning Board determined that the property is located in the Waterfront Mixed Use 2 Zoning district and the Waterfront Development Shoreland district. This Zoning district and Shoreland district allow a property owner/applicant to voluntarily request the award of a contract rezoning agreement. The Applicant has chosen to pursue a contract rezoning agreement to obtain a reduction in the amount of structure setback required for the Waterfront Mixed Use 2 zoning district from certain lot lines. More specifically, the lot line adjacent to the City owned Belfast Harbor Walk right-of-way, and a side lot line with the adjacent property owned by John Holmes that is leased by the Front Street Shipyard. The Site Plan entitled “Site Plan, Lands of MAIA Properties, LLC and Mena F. Holmes, Marshall Wharf Road, Belfast, Maine, dated 4-27-2020 prepared by Good Deeds” identifies the proposed layout of the renovated Restaurant and depicts the proposed structure setbacks. Said Site Plan is incorporated as the approved Site Plan for this Contract Rezoning Agreement.

5.1 Waterfront Mixed Use Zoning District Standards.

Permitted Uses:

The Applicant proposes to use the property as a restaurant. The Planning Board determined that a restaurant with indoor seating and a restaurant with outdoor

seating are permitted uses in the Waterfront Mixed Use 2 zoning district; reference Section 102-461, 72) and 73). Any request by the Applicant to change the use of the property from a restaurant (indoor and outdoor seating) or to increase the number of seats (currently about 220 seats) by 25 or more seats shall require the review and approval of the Belfast Planning Board as an amendment to this Contract Rezoning Agreement. The City Council, in its adoption of this Contract Rezoning Agreement, specifically authorized the Planning Board to consider and act on any proposal from the Applicant for a change of use, or an expansion in the number of seats in the restaurant, and to not require the review and approval of the City Council as an amendment to this Contract Rezoning Agreement for either of the above potential proposals by the Applicant.

Minimum Lot Size:

The Belfast Planning Board determined that the minimum lot size standard for the Waterfront Mixed Use 2 zoning district is 20,000 sq ft for a nonresidential use [reference Sec 102-471 1)k], and that the minimum street frontage requirement is 200 lineal feet for a property that has shore frontage [reference Sec 102-471 2)b]. Pursuant to Footnote 3 of the Dimensional Table for the Waterfront Mixed Use 2 zoning district, the Planning Board determined that the property, Map 11, Lot 141B, is a nonconforming lot of record for a nonresidential use.

Any request by the Applicant to increase the size of this nonconforming lot of record shall require the review and approval of the Belfast Planning Board. The City Council, in its adoption of this Contract Rezoning Agreement, specifically authorized the Belfast Planning Board to consider and act on any request from the Applicant to increase the size of the lot, and to not require review of such a request by the Council as an amendment to the approved Contract Rezoning Agreement.

Any request by the Applicant to decrease the size of the lot or the amount of street frontage for the lot, either of which would result in making the lot more nonconforming, shall require the review and approval of both the Belfast Planning Board and the Belfast City Council as an amendment to the approved Contract Rezoning Agreement.

Structure Setbacks.

The Planning Board determined that the Dimensional Table for the Waterfront Mixed Use 2 Zoning district, Section 102-471, identifies the amount of structure setback for nonresidential structures.

- a. Front Setback. Subsection 3) c. identifies a front structure setback requirement of 10 feet from a property line. **TWO OPTIONS FOR COUNCIL TO CONSIDER.**

OPTION A: A stair hall addition/expansion proposed by the Applicant on the southerly side of the building (adjacent to the Harbor Walk) would result in a 0 (zero) setback from the Harbor Walk right-of-way owned by the City. The Council chose to allow a zero setback for the footprint of the new/expanded stair hall from the Harbor Walk right-of-way, and to allow the eaves of the structure to encroach by no more than 1 foot into the Harbor Walk right-of-way. Any request by the applicant to increase the size of the structure (stair hall) adjacent to the Harbor Walk right-of-way and that is located within 10 feet or less of the Harbor Walk right-of-way shall require the review and approval of both the Belfast Planning Board and the Belfast City Council as an amendment to the approved Contract Rezoning Agreement.

OPTION B. A stair hall addition/expansion proposed by the Applicant on the southerly side of the building (adjacent to the Harbor Walk) would result in a minor encroachment into the City owned Harbor Walk right-of-way and would have no setback from the right-of-way. The City Council supported allowing the foundation of the stair hall to encroach on the right-of-way by no more than 12 inches, and to allow the eaves of the stair hall to encroach on the right-of-way by no more than 24 inches. Any request by the Applicant to increase the size of the structure (stair hall) adjacent to the Harbor Walk right-of-way and that is located within 10 feet or less of the Harbor Walk right-of-way, or that proposes any further encroachment into the Harbor Walk right-of-way shall require the review and approval of both the Belfast Planning Board and the Belfast City Council as an amendment to the approved Contract Rezoning Agreement.

- b. Side Setback. Subsection 4) c. identifies a structure setback requirement of 5 feet from the side property line. The Applicant is proposing to construct an addition to the existing building to create a new commercial kitchen and walk-in cooler adjacent to the northerly side lot line (common property line with the adjacent Holmes property). This structure would be setback between 0 (zero) feet and two feet from the side lot line. The City Council voted to allow a zero setback from the side lot line for the commercial kitchen/cooler expansion, provided that the footprint and eaves of the expanded structure are located on property owned by the Applicant. Any request by the Applicant to increase the size of the structure within the minimum side setback area of 5 feet shall require the review and approval of both the Belfast Planning Board and the Belfast City Council as an amendment to the approved Contract Rezoning Agreement.

Structure Expansions that Conform to Setback and Building Height Requirements.

If the Applicant submits a request to expand the size of the structure, and the proposed expansion complies with all structure setback and building height requirements that are in effect for the Waterfront Mixed Use 2 zoning district, the City Council, through this Condition of Approval, authorizes the Belfast Planning Board to review and act on the proposed expansion, and to not require review by the City Council as an amendment to this Contract Rezoning Agreement.

5.2 Waterfront Development Shoreland Zone.

Permitted Uses. The Applicant proposes to use the property as a restaurant. The Planning Board determined that a restaurant is a commercial use and that Section 82-135, Table of Uses for the Shoreland zone, allows commercial uses in the Waterfront Development Shoreland district. Any request from the Applicant to change the use of the property from a restaurant, or to increase the number of seats in the restaurant by 25 or more seats (currently 220 seats) shall require an amendment to this Contract Rezoning Agreement. The City Council, in its adoption of the Contract Rezoning Agreement, specifically authorized the Planning Board to consider and act on either of the above requests and to not require City Council review and approval of the requested amendment.

Minimum Lot Size: The Belfast Planning Board determined that the minimum lot size standard for the Waterfront Development Shoreland district for a commercial use is 40,000 square feet and 200 feet of shore frontage; reference Section 82-181. Map 11, Lot 141B does not satisfy either of these requirements, thus, the Board determined that the property is a nonconforming lot of record.

Any request by the Applicant to increase the size of this nonconforming lot of record shall require the review and approval of the Belfast Planning Board. The City Council, in its adoption of this Contract Rezoning Agreement, specifically authorized the Belfast Planning Board to consider and act on any request from the Applicant to increase the size of the lot.

Any request by the Applicant to decrease the size of the lot or the amount of shore frontage for the lot, either of which would result in making the lot more nonconforming, shall require the review and approval of both the Belfast Planning Board and the Belfast City Council as an amendment to the approved Contract Rezoning Agreement.

Structure Expansions that Conform to Setback, Building Height, Lot Coverage and Shore Setback Requirements.

If the Applicant submits a request to expand the size of the structure, and the proposed expansion complies with all structure setback, building height, lot coverage and shore setback requirements that apply to the Waterfront Development Shoreland district, the City Council, through this Condition of Approval, authorizes the Belfast Planning Board to review and act on the proposed expansion, and to not require review of the proposal by the City Council as an amendment to this Contract Rezoning Agreement.

6. **ON-SITE and OFF-SITE PARKING (Council Particularly Needs to Consider the Handicap Parking Proposal from the Board)**

The Planning Board recommends that the Applicant not be required to provide any on-site parking for the current proposal, a 220 seat restaurant (about 94 seats on second floor and deck, about 78 seats on the upper floor and deck, and about 50 seats on the ground). The Planning Board determined that the Applicant could obtain adequate parking for the restaurant identified in Clause 4 above by the use of off-site public parking. The City also recognizes that the Applicant may have a greater number of patrons at the restaurant who do not have a seat; standing customers.

This Condition grants the Applicant the right to establish the 220 seats currently proposed, and to increase the number of seats by 25 or less (total of 245 seats) without any further review and approval by the City. Any request by the Applicant to increase the number of seats to 246 or more, shall require the review and approval by the Planning Board as an amendment to this Contract Rezoning Agreement. The City Council specifically authorized the Planning Board to act on a request to increase the number of seats to 246 or more and to not require City Council review of any such proposed amendment.

(Council consideration – This proposed change in public parking, if approved by the Council, does not necessarily need to be part of the Contract Rezoning Agreement). The Planning Board recommends to the City Council that the Council change the designation of two of the current parking spaces located in Belfast Yards and adjacent to the side of the Front Street Pub property to handicap accessible parking. Said handicap parking would not be devoted exclusively to the use by patrons of the Three Tides Restaurant (it would be available to all), however, it would help to provide some handicap parking within reasonable proximity to Three Tides. A 220 seat restaurant typically would be required to provide 7 handicap spaces.

7. **BUILDING APPEARANCE.**

The Planning Board recommends that the exterior of the existing building and the new additions to the building substantially comply with the building elevation drawings prepared by WhiteCAP Builders that were reviewed and recommended by the Belfast Intown Design Review Committee at its meeting of June 18, 2020; reference revised drawings dated June 19, 2020, a copy of which are on file at the Code and Planning Department offices.

The City Council, as a condition of this Contract Rezoning Agreement, determined that any substantive change in the approved building design shall require the review and approval of the Design Review Committee pursuant to requirements of the City Code of Ordinances, Chapter 80, Intown Design Review, and that these types of proposed changes, unless such are proposed as part of an application that would

require the review of the City Council or Planning Board as an amendment to this Contract Rezoning Agreement, would not require review as an amendment to this Contract Rezoning Agreement. As such, the Design Review Committee would review and act on a permit request through the standard process identified in Chapter 80, and would have the authority to approve or deny a proposed change.

8. UTILITIES.

The existing building is connected to all public services and no specific improvements are proposed or required. A request to install new utilities or alter the existing location of any utilities shall be subject to review and approval by the Code Enforcement Officer and shall not require review by the Planning Board or City Council as an amendment to this Contract Rezoning Agreement.

9. SEWER USE FEES.

The Applicant is proposing a significant increase in the number of seats at the restaurant, about 78 seats. Pursuant to the City Sewer Connection and Use Policy, as such was amended in 2017, the Applicant, prior to issuance of an Occupancy Permit, shall pay the City the attendant fee associated with the increase in the amount of sewer effluent generated by the expanded use. The Applicant shall submit the required application to the Code Enforcement Officer and the Code Enforcement shall determine the amount of fee that must be paid. Further, any future increase in the number of seats may require the Applicant to pay an additional sewer usage fee.

10. GLARE - LIGHTING.

No exterior lighting shall cause glare on an adjacent property, a public street or the Harbor Walk. All on-site lighting shall be down-directed to minimize the likelihood of offensive glare, and no on-site lighting shall cause glare that would adversely affect navigation on the adjacent River. The installation of any and all exterior lighting, such as the type and location of any fixture, and type of light source, shall be subject to the review and approval of the Code Enforcement Officer and shall not require review by the Planning Board or City Council as an amendment to this Contract Rezoning Agreement.

11. NOISE.

The operation of the Restaurant, and any music/entertainment that performs at the Restaurant shall comply with all requirements of Chapter 34, Miscellaneous Offenses, Article II, Noise and Public Conduct, of the City Code of Ordinances, as such Ordinance may be amended from time to time, and shall obtain any and all required City licenses to offer music/entertainment. Further, if the Applicant proposes any exceptions to said requirements for a specific event that may be operated on the premises, the Applicant shall obtain the approval of the City Council to host such an event.

12. SOLID WASTE.

The Applicant proposes to manage the collection and disposal of solid wastes by leasing an off-site area owned by 48 Marshall Wharf, LLC (Map 11, Lot 141) for the location of a dumpster and recyclable containers. The Applicant is responsible for the regular collection of all wastes, depositing all wastes in the off-site dumpster/recyclable containers, and for ensuring that the dumpster area is well maintained and kept free of litter. Further, the Applicant must ensure that the dumpster/waste collection area complies with all City requirements regarding screening; reference Chapter 102, Zoning, Article VIII, Supplementary Performance Standards.

The Applicant shall take all reasonable measures to minimize, to the greatest extent practical, attracting rodents to the site by using good quality practices to manage all wastes.

If the Applicant proposes to change the location of the waste collection area or the method of collecting and disposing of wastes, the Applicant shall obtain the review and approval of the Belfast Code Enforcement Officer regarding said change. Said change shall not require an amendment to this Contract Rezoning Agreement, however, the Code Enforcement Officer may choose to consult with the Belfast Planning Board regarding the review of a proposal to amend the method or location for the collection and disposal of solid wastes and recyclables.

13. FLOOD PLAIN REQUIREMENTS.

All of the Applicant property, including all existing structures and the proposed expansions, are located within the Floodplain, AE zone, elevation 11. With the exception of the new stair halls, the City requires that the lowest floor of any new habitable area be located a minimum of 2 feet above of the identified flood elevation as a Condition of this Contract Rezoning Agreement.

14. STORMWATER.

The City requires that all stormwater be directed away from all adjacent properties, including the City Harbor Walk, and that the Applicant take appropriate measures to direct all stormwater to the adjacent River. The Code Enforcement Officer shall be responsible for the review and approval of all construction plans to ensure that this standard is addressed. If stormwater from the site, particularly the new construction, does flow or adversely impact an adjacent property, the Applicant shall take any and all appropriate measures to address this problem.

15. BICYCLE RACK.

The Applicant, prior to issuance of an Occupancy Permit, shall be required to install an on-site rack/facility to support bicycle use. The City Code Enforcement Officer, pursuant to this Condition, is authorized to approve the final location of the bicycle rack.

16. HANDICAP ACCESSIBILITY.

The main floor of the former Restaurant and all proposed renovations satisfies handicap accessibility concerns; there is a handicap accessible ramp to the main floor, and the existing restrooms satisfy accessibility standards. The City, in issuing this Contract Rezoning Agreement, recognizes that the Applicant is not required to provide handicap accessible improvements to the new upper floor of the restaurant because the main floor of the restaurant offers similar accommodations.

17. OUTSIDE STORAGE. (NOTE TO COUNCIL. The Planning Board did not review the specific language for this proposed Condition. This specific language is being presented by the Department to reflect an overall Board concern regarding the appearance of the property).

The Applicant shall not store goods, materials, equipment and similar objects outside of the Restaurant building, and shall not store any goods, materials, equipment or similar objects between the Restaurant building and the Harbor Walk. All goods, materials equipment and similar objects shall be stored inside the building or shall be properly screened from public view. Chapter 102, Zoning, Article VIII, Supplementary District Regulations, prohibits Outside Storage that is not properly screened.

18. SIGNS.

On-site signage shall comply with the Sign provisions that apply to the Waterfront Mixed Use 2 zoning district. The Applicant shall obtain the required permit from the Code Enforcement Officer for any on-site signage.

19. PERMIT ISSUED TO APPLICANT – CHANGE OF OWNERSHIP

Prior to the issuance of an Occupancy Permit for the construction identified in this application, this Contract Rezoning Agreement issued to the Applicant is granted specifically to the Applicant, and is not transferrable or assignable to any other party without the specific review and approval of the Belfast Planning Board as an amendment to this Contract Rezoning Agreement. The role of the Planning Board is to determine if the new Applicant/Owner has the financial and technical ability to satisfy requirements of this Contract Rezoning Agreement. Said review of the

Planning Board shall occur within 30 days for a request in a change of ownership, and approval of said transfer shall not be unreasonably withheld.

Post issuance of an Occupancy Permit, a request for a transfer in ownership of the Agreement shall be subject to the review and approval of the City Code Enforcement Officer, who shall consult with the City Manager and City Attorney in the review of the request for a transfer of this Agreement. Said review of the Code Enforcement Officer shall occur within 30 days for a request in a change of ownership, and approval of said transfer shall not be unreasonably withheld.

This Condition establishes the established procedures to consider a transfer of this Agreement that are identified in Clause 8), Assignment, of this Contract Rezoning Agreement between the Applicant and the City.

20. OCCUPANCY PERMITS.

The City shall use the issuance of an Occupancy Permit as the main form of performance guarantee to ensure that the Applicant satisfies all City requirements prior to use and occupancy of the building. The Code Enforcement Officer shall be responsible for determining if an Occupancy Permit should be issued (**NOTE – Should not hold applicant responsible for any change in public parking as condition of occupancy permit**).

21. NON-CITY (OTHER) PERMITS

The Applicant shall provide the City Code Enforcement Officer a copy of all permits that may be required and that it obtains from any state or federal (non-City) agencies. If a state or federal permit applies to improvements involved with the issuance of a City building, demolition or similar permit, the Applicant shall obtain said permits prior to the issuance of a City permit.

The Applicant shall abide by terms of all state and federal (non-City) permits that are required for this project. If any conditions or requirements imposed by state or federal agencies differ or conflict with requirements established by the City, the Applicant shall inform the City of said conflicts and shall work with the City to resolve the conflict. This could require an amendment(s) to the City permits and this Contract Rezoning Agreement.

The Applicant shall inform the City Code Enforcement Officer of orders regarding project construction or compliance that may be issued by other agencies, and describe the action performed by the Applicant to comply with the respective order.