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Land Court
Docket Number: 26 MISC 000403

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, SS DOCKET NO. 26 MISC 000403

MISTY MOUNTAIN SHOP LLC, and HALONA MUI, Plaintiffs,
PLAINTIFF,

v.

CITY OF MALDEN, and PEG CROWE, PAUL CONDON, AMANDA LINEHAN, RYAN O'MALLEY, ARI TAYLOR, STEPHEN WINSLOW, CHRIS SIMONELLI, JADEANE SICA, MICHELLE LUONG, KAREN COLÓN-HAYES, and CAREY MCDONALD, as Members of the CITY OF MALDEN CITY COUNCIL; and DMS TRINITY, LLC, Defendants.

DEFENDANT DMS TRINITY, LLC'S ADDENDUM TO THE JOINT CASE MANAGEMENT CONFERENCE STATEMENT

Defendant DMS Trinity, LLC ("DMS Trinity") submits this Addendum to the Joint Case Management Conference Statement filed September 1, 2026, in advance of the Case Management Conference scheduled for September 8, 2026 at 2:00 p.m. before the Honorable Diane R. Rubin.

DMS Trinity, the petitioner and holder of the special permit at issue, was named as a defendant by the First Amended Complaint but had not yet appeared when the Joint Statement was filed and therefore did not participate in it. DMS Trinity has now appeared through the undersigned counsel and submits its positions on the matters addressed in the

Joint Statement below. DMS Trinity adopts the Joint Statement except as supplemented here.

1. CASE DESCRIPTION - DMS TRINITY'S DESCRIPTION

DMS Trinity is the applicant that petitioned for, and the holder of, the special permit that is the subject of this G.L. c. 40A, section 17 appeal, and it is the real party in interest in the transaction the Plaintiffs seek to undo. DMS Trinity denies that the City Council's June 23, 2026 decision was unlawful. The decision was a lawful exercise of the Council's authority under the Massachusetts Zoning Act. DMS Trinity further contends that neither Plaintiff has standing to maintain this appeal and that the First Amended Complaint fails to state a claim upon which relief can be granted.

DMS Trinity joins the City of Malden's position that all counts should be dismissed, and it intends to press independent grounds for dismissal as set forth in Section 4 below.

2. IDENTIFICATION OF PARTIES AND STATUS OF DMS TRINITY

The Joint Statement identifies DMS Trinity as an unrepresented defendant that had not entered an appearance, notes that the Plaintiffs were serving DMS Trinity by paper mail, and suggests that the Court may wish to address DMS Trinity's status and set a deadline for entry of appearance. That issue is now moot. DMS Trinity has retained Foster, Walker & Di Marco, P.C., and counsel has entered an appearance on its behalf. Accordingly, the Plaintiffs' reservation of the right to move for a default, and the parties' request that the Court address DMS Trinity's non-appearance, are moot and require no action by the Court.

DMS Trinity notes that, because it was added as a defendant under the First Amended Complaint after this action was commenced, the Court's electronic filing system does not yet list DMS Trinity as a party. DMS Trinity has therefore effected this filing, and its entry of appearance, by email upon the Court and all counsel of record, and will continue to do so until it is added to the electronic docket.

DMS Trinity consents to service of pleadings and other documents by email pursuant to Mass. R. Civ. P. 5(b) and requests that all parties serve it electronically on the undersigned counsel going forward, in place of paper service.

3. DISCOVERY PLAN

DMS Trinity anticipates that this appeal can likely be resolved on the administrative record and on questions of law, and it does not presently believe that discovery outside the administrative record will be necessary. DMS Trinity agrees that the City of Malden should prepare and certify the administrative record.

DMS Trinity does not, however, waive or limit any right to conduct discovery, and it reserves all such rights. In the event the Court permits discovery, any other party propounds or conducts discovery, or circumstances otherwise warrant, DMS Trinity reserves the right to seek and to conduct discovery to the full extent allowed, including the right to serve its own discovery, to respond in kind, and to designate experts, on a schedule consistent with the F Track and the Court's orders. Should discovery proceed, DMS Trinity respectfully suggests that any discovery outside the administrative record be coordinated with, and where practicable deferred pending, the Court's resolution of the

threshold dispositive motions described in Section 4, so that the parties and the Court are not put to unnecessary burden on claims that may be resolved as a matter of law.

4. MOTION SCHEDULE

DMS Trinity intends to file its own threshold motion to dismiss under Mass. R. Civ. P. 12(b)(1) and 12(b)(6), directed to the Plaintiffs' lack of standing and their failure to state a claim. That motion is separate from, and in addition to, the dispositive motion the City of Malden has indicated it will file, and it raises grounds specific to DMS Trinity's position as the permit holder.

DMS Trinity requests that the Court sequence the threshold Rule 12 motions before any merits or record-based briefing and before any extra-record discovery, because the standing and pleading questions are potentially dispositive of the entire appeal and can be decided as matters of law. DMS Trinity is prepared to file its Rule 12 motion on the same schedule the City of Malden has proposed (on or before December 18, 2026) or on such date as the Court may set, and it requests that merits briefing and the Plaintiffs' anticipated cross-motions be stayed pending resolution of the threshold motions. DMS Trinity does not object to the F Track dispositive-motion benchmarks referenced in the Joint Statement as an outer limit, but it favors the earlier, threshold-first sequence.

5. ALTERNATIVE DISPUTE RESOLUTION

DMS Trinity agrees that mediation is not viable at this time because the dispute turns primarily on questions of law requiring judicial resolution. DMS Trinity will participate in any ADR process the Court directs.

6. THIRD PARTIES AND DEFAULT

For the reasons stated in Section 2, DMS Trinity's entry of appearance moots the Plaintiffs' reservation of a right to seek a default against it. DMS Trinity is now an appearing, participating defendant and will defend the appeal on the merits and on the threshold grounds described above.

7. OTHER MATTERS

DMS Trinity reserves the right to raise additional matters at the Case Management Conference, including the sequencing of briefing and the scope of any administrative record and discovery.

DMS TRINITY, LLC,
By its attorneys,

/s/ Roberto Di Marco
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Dated: September 7, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true copy of the within Addendum to the Joint Case Management Conference Statement filed September 1, 2026 was served upon all parties or their counsel of record by electronic filing and by email to:

Blake M. Mensing, Esq. (blake@cfsattorneys.com) and Quinn Riley Heath, Esq. (quinn@cfsattorneys.com), Cable, Fleisher & Sosebee, PLLC, counsel for Plaintiffs; and

Alicia A. McNeil, Esq., and Christopher Mooney, Esq., City of Malden Legal Department, counsel for the City of Malden and the City Council Defendants.

/s/ Roberto Di Marco
Roberto Di Marco,

Dated: September 7, 2026