

August 12, 2009

Mr. William Needleman
Senior Planner
Planning and Development Department
City of Portland
389 Congress Street
Portland, ME 04101-3509RE: **Site Improvements, Performance Guarantee**

Dear Bill:

It was a pleasure to meet with you and the rest of the Planning team to discuss current and future issues with the Ocean Gateway Garage and Watermark projects. I would like to summarize the major issues touched on at the meeting, as well as state Intercontinental's position relative to them, so that we may agree on the appropriate action steps moving forward. They were as follows:

1) The Final Certificate of Occupancy (CO) for OGG

The final CO shall be issued pending the resolution of the issue regarding the lighting levels at the sidewalks under the entry canopies. Bill Needleman and Larry Bartlett have corresponded and will presumably work this out to everyone's satisfaction. There was an issue brought up about the curb at the corner of Fore and India streets and whether that would be a condition for the CO. The consensus seemed to be that it would not be a condition as it was not referenced in the September 15, 2008 correspondence between Richard Libardoni and Jeannie Bourke which chronicled the remaining items to be addressed for CO.

2) Permits and Construction Lull

It is our understanding that Permits associated with the Watermark and 25 India Street projects, being part of the overall phased development including OGG, Watermark, and 25 India Street, will lapse after a one-year lull in construction activity on the site. We have confirmed with Ledgewood Construction that the street lighting was installed in mid-December 2008, allowing for the removal of the temporary lighting along Fore Street by year's end. Subsequently, and at the City's request, E.S. Boulos capped fixtures at the entry canopies on March 13, 2009 to moderate the lighting levels on the sidewalk. This suggests that either January 1, 2009 or March 13, 2009 should mark the start of the construction lull. Obviously, we would advocate for the latter. Regardless, if we proceed this year with the upgrades to the curbs and sidewalks the City is requesting, the construction lull clock would reset.

3) Curbing and Sidewalk - Northeast Corner of Fore and India Intersection

A request was made that we address the stepped condition in the sidewalk at the corner of Fore and India streets, locating the curb at its permanent height and placing a temporary bituminous sidewalk. We had intended that this work be done during the construction of 25 India Street but are willing to accelerate it to solve the difficult accessibility problem that exists. Currently, there exists a CMP vault with manhole access that will interfere significantly with the proposed corner handicap ramp. We are studying alternatives to the relocation of the vault and cap (an expensive proposition) and feel that it will be a better solution to the corner pedestrian circulation if we create two handicap ramps, pushing one further up India Street. This has the double benefit of solving the CMP problem and creating a more conventional geometry for the crosswalk at the northern side of the intersection. We are in the process of pricing this work with Shaw Brothers and suggest that we schedule a meeting with the City, Intercontinental, Woodard & Curran, and Shaw Brothers to review the interim scope of work. There also seemed to be a lack of clarity relative to the need for street opening permits for this work. Perhaps this can be clarified when we meet on site.

4) Curb and Sidewalk Improvements along Fore Street

It was noted at the meeting that the City would like to see the final configuration of the curbs and cuts installed along Fore Street at the Watermark parcel. Given the grading issues and infrastructure requirements, we do not feel it would be a benefit to install the permitted curb configuration. The significant investment required to install the underground electrical vaults and other infrastructure that is integral to the curb and sidewalk placement would be counterproductive. We feel it is important to maintain flexibility along Fore Street so that we don't compromise the potential for re-design and re-permitting should an alternate use present itself. With the current state of the market for luxury residences and the pending litigation affecting the property, we are not in a position to entertain such an investment in the sitework at this time.

5) Performance Guarantee Release

We discussed the concept of a partial release of the Performance Guarantee for the OGG/Watermark development based on the value of the completed improvements. Intercontinental was to prepare a "laundry list" of completed items and apply for a reduction based on the list. However, by my reading of the City of Portland Code of Ordinances Sec. 14-522, we are not eligible to receive a reduction on the guarantee. It states: "in no case, however, shall any performance guarantee be reduced (1) by less than \$200,000...at any one time; or (2) in any line item where improvements remain to be completed..." In tabulating the values relative to the work in place, we have come up with a value for the improvements of \$187,788. In addition, much of this work has been done within line items that still have work remaining relative to the Watermark and 25 India Street parcels. Given that the dollar amounts approximate the threshold in the ordinance (a seemingly arbitrary figure (?)) and the tasks completed for OGG

within the overall line items are relatively discrete, I would like to discuss the possibility of seeking relief from these provisions of the ordinance. I'm not sure if there is flexibility in administering the ordinance for a phased development or not but given the uncertain timing we are faced with, I would obviously like not to have those dollars tied up if we can see a path around it.

I trust this letter adequately reflects the issues presented by the City at our meeting. If I have missed anything, please don't hesitate to contact me so we can get on the same page. In any case, I would appreciate a response with respect to our positions on these matters so that we can all be clear on the path forward.

Best regards,



Nicholas Iselin
Director, Development & Construction

Cc Christopher T. Tully, Intercontinental Management
Gregory A. Mitchell, City of Portland