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August 28, 2012

Barbara Barhydt
City of Portland
389 Congress Street
Room 308
Portland, ME 04101

Re: The Bay House
112 Newbury Street

Dear Barbara:

Listed below are the Subdivision Conditions of Approval, the Site Plan Conditions of Approval and the other items referenced in your email of July 31, 2012 (copy attached). Below each condition is a status report or reference to an enclosure addressing the condition. You will note that a few of these items are still in progress; we wanted to make sure we forwarded any information we have for your review at this time and will send along any outstanding items as soon as possible. Please let us know if you would like further clarification or documentation for any of these conditions.

I. SUBDIVISION CONDITIONS OF APPROVAL

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) that the amended plan is in conformance with the subdivision standards of the Land Use Code, subject to the following conditions of approval:

1. The approvals for the Amended Subdivision and Amended Site Plan for the Bay House are contingent upon the City Council adopting of the Third Amended Rezone Agreement for the Bay House.

STATUS:

City Council adopted the Third Amendment to the Conditional Rezoning Agreement on August 7th, 2012. Please see Exhibit A attached to this letter.

2. The approvals for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.

STATUS:

The Developer intends to commence construction by September 22, 2012 and is actively pursuing required permits.

3. All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.

STATUS:

A check in the amount of \$62,600 will be submitted to the City at the time General Contractor-Metric Construction submits an application for a building permit. Please see Infrastructure Financial Contribution Form attached as Exhibit B.

4. The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.

STATUS:

This condition is within the scope of construction and will be addressed during the construction phase.

5. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of September 16, 2009 and June 7, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

STATUS:

Please see attached letter from Sebago Technics addressing the recommendations contained in Steve Bushey's memoranda of September 16, 2009 and June 7, 2012 at Exhibit C.

6. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandum of June 27, 2008 and contained in David Margolis-Pineo, Deputy City Engineer's, September 16, 2009 and June 8, 2012 memorandums shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

STATUS:

Please see attached letter from Sebago Technics addressing the recommendations contained in Michael Farmer and David Margolis-Pineo's memoranda of June 28, 2007, September 16, 2009 and June 7, 2012 at Exhibit C.

7. The following schedule outlines the City's expectation with regard to its street improvements and associated fees to be paid by the developer.

Hancock Street

- The developer will contribute \$43,000 to the City for the reconstruction of Hancock Street for the agreed upon portion between Middle and Newbury Streets prior to the issuance of a building permit.

Newbury Street

- The developer shall reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

Middle Street

- The developer shall pay to the City current Street Opening Fees, as applicable.
- The developer may choose one of the following two options:

The developer shall reconstruct the entire length of Middle Street (from Hancock to India) in which case there will be no Pavement Restoration charge incurred;

OR

The developer shall reconstruct the entire frontage of its site (from Hancock along Middle Street) and trench the remaining to India. If the developer chooses this option, it will also incur a Pavement Restoration fee equal to \$65 per square yard (from the edge of its frontage to India Street).

STATUS:

Hancock: The developer will submit a check in the amount of \$43,000 for the reconstruction of Hancock Street between Middle and Newbury Streets prior to the issuance of a building permit as the condition requires.

Newbury: Per the subdivision plan and construction documents, the developer will reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

Middle: The developer will submit a check for the current Street Opening Fee for work in Middle Street as and when applicable.

8. The Retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and

that documentation of such participation will be provided to the City Planning Authority every two (2) years.

STATUS:

Documentation of participation in a Park and Shop Program will be provided to the City Planning Authority prior to issuance of a certificate of occupancy and every two years thereafter as the condition requires.

9. The proposed condominium documents, if applicable, and a copy of the pedestrian easement to benefit the adjoining property shall be submitted for review by Corporation Counsel's Office prior to the issuance of a Certificate of Occupancy.

STATUS:

The proposed condominium documents will be presented to Corporation Counsel prior to submitting an application for a certificate of occupancy as the condition requires.

10. The applicant shall submit for review and approval by Corporation Counsel the access easement on the westerly property line.

STATUS:

Please see attached access easement at Exhibit D.

11. A copy of the lease for the 14 parking spaces for residential units and 6 retail spaces to be provided in the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years.

STATUS:

A copy of the lease is attached to this letter at Exhibit F and will be provided every two years thereafter as the condition requires.

12. The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.

STATUS:

The developer will prepare and Transportation Demand Management Plan and submit the plan for review to the Planning Authority prior to submitting an application for a certificate of occupancy as the condition requires.

13. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval.

STATUS:

Please see attached letter from Sebago Technics addressing the recommendations contained in Thomas Errico's memorandum of May 18, 2012 at Exhibit C.

II. SITE PLAN REVIEW CONDITIONS OF APPROVAL

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval:

1. A construction management site plan that shows any potential impacts on sidewalks and on the public right-of-way along with mitigation measures and the estimated construction schedule must be submitted for review and approval by the Planning Authority prior to the issuance of a building permit.

STATUS:

A construction management plan will be submitted as soon as possible for review and approval by the Planning authority prior to the issuance of a building permit as required by this condition.

2. The applicant shall submit a unified plan for signage for review and approval by the Planning Authority prior to the issuance of a certificate of occupancy.

STATUS:

Currently the contract drawings show signage for the exterior of the building. These are noted to be for budget purposes only and not intended to be the final signage appearance. During construction the owner will work with a signage contractor to develop an exterior signage presentation for the project. This will be completed and submitted to the Planning Authority for approval prior to the issuance of certificate of occupancy as the condition requires.

3. The fire protection approval based upon the narrative and conditions from the approval in 2007 shall remain in effect unless revisions are reviewed and approved by the Fire Department. The enclosed parking garage ventilation system must be submitted for review and approval by the Fire Department prior to the release of a building permit.

STATUS:

The fire protection approval is presently based on the narrative and conditions from the approval in 2007. We will review with the state fire marshal and fire department if any revisions will be required prior to the release of a fire protection permit application.

Due to the nature of the design/build fire protection contract, we are unable to immediately provide design information on the enclosed parking garage ventilation system. However, we will review specific code compliant details and design information with the state fire marshal and fire department prior to the submission of a fire protection permit application.

4. Revised plans and information meeting the recommendations and addressing the suggestions contained in Jeff Tarling, City Arborist's memorandum of June 8, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

STATUS:

Please see attached letter from Sebago Technics addressing the recommendations contained in Jeff Tarling's memoranda of June 8, 2012 at Exhibit C.

5. The applicant shall submit the specifications for the opaqueness of the windows for the Planning Authority's review and approval, prior to the issuance of a building permit.

STATUS:

Please see attached as Exhibit E a chart from Jeld-Wen Windows and Doors. In that chart a red box is provided that surrounds the SHGC and VT information on the windows specified for the project. The windows are specified with SDL grilles. SHGC is the Solar Heat Gain Coefficient. VT is the Visible light Transmission.

6. Any changes to the window material, including but not limited to bars on sidewalk windows, shall be submitted to the Planning Authority for review and approval.

STATUS:

There are no changes to the window material planned at this time. In the event that there are changes, information will be submitted to the Planning Authority for review and approval.

7. The defect guarantee covering landscape improvements shall be extended for a two (2) year time period.

STATUS:

We are currently working with Danielle West-Chuhta to develop a performance guarantee and defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible. The defect guarantee covering landscape improvements will be extended for a two year time period as the condition requires.

STANDARD CONDITIONS OF APPROVAL

Please note the following standard conditions of approval and requirements for all approved site plans:

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee.

STATUS:

A revised Subdivision Recording Plat was submitted to the Planning Authority on August 8, 2012.

2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).

STATUS:

All waivers are noted on the subdivision plan and will be recorded within 90 days of approval.

3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.

STATUS:

The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant.

4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the

Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.

STATUS:

We are currently working with Danielle West-Chuhta to develop a performance guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible. An inspection fee payment of 2% of the guarantee amount and seven final sets of plans will be submitted to the Planning Division and Public Services Department prior to the release of the building permit as the condition requires.

5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

STATUS:

We are currently working with Danielle West-Chuhta to develop a defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible.

6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

STATUS:

The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing.

7. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.

STATUS:

The General Contractor-Metric Construction and their trades will submit the proper applications for building and trade specific required permits to the city inspectional department for the review and approval prior to start of work.

8. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

STATUS:

The General Contractor-Metric Construction and or the site contractor will apply and pay for all street opening and public way permits as required by the Department of Public Services.

9. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.

STATUS:

The General Contractor-Metric Construction upon completion of the project will submit as-built drawings to the planning department as indicated.

10. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

STATUS:

The General Contractor-Metric Construction and their site contractor upon completion and prior to a certificate of occupancy will submit Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision.

III. BARHYDT CONDITIONS RE: EMAIL OF JULY 31, 2012

1. The approval letter is attached for your use and there are 13 conditions of subdivision approval and 7 conditions of site plan approval. The final plans must to be revised to meet those conditions. The City staff will need to review the plans to assure conformance with the conditions, so you will need to factor some time into the process before the start of construction.

STATUS:

Revised Plans have been submitted to the Planning Division for review.

2. The recording plat must reflect all of the final conditions of approval from the Planning Board and we will need to review the final plat prior to the Planning Board signing the

plat. The Planning Board has one meeting in August, which will be held on August 14th. I recommend that you revise the plat now for review, so it is ready to be signed on the 14th. (The next available meeting is September 11, 2012.)

STATUS:

A revised Subdivision Recording Plat was submitted to the Planning Authority on August 8, 2012.

- 3 As noted in the standard conditions of approval, a performance guarantee acceptable to the City (the PG packet attached to the approval letter and include here, contains the templates for the guarantees and a cost estimate form). The performance guarantee must be in place along with the inspection fee prior to the release of the plat for recording at the Cumberland County Registry of Deeds. There are templates for the performance guarantees that address letters of credit or escrow accounts with either a financial institution or with the city. If you make changes to the form, then it must be reviewed by the legal staff. We also review the cost estimate figures and compare the estimates with the final plans.

STATUS:

We are currently working with Danielle West-Chuhta to develop a performance guarantee and defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible.

4. One of the conditions of approval for the site plan is the preparation of a construction management for review and approval. This plan must address the traffic and pedestrian circulation around the site and any proposed mitigation measures to assure adequate access. This must be complete prior to the start any work on the site.

STATUS:

A construction management plan will be submitted as soon as possible for review and approval by the Planning authority prior to the issuance of a building permit as required by this condition.

5. Similarly, a pre-construction meeting must be held prior to the initiation of any site work and construction.

STATUS:

The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing.

6. The Planning Authority may authorize the start of site work prior to the release of a building permit (see the provisions under Sec. 14-532 (d) 2. b.) The final plans,

performance guarantee, inspection fee, construction management plan and pre-construction meeting must be complete prior to the start of site work.

STATUS:

The final plans, performance guarantee, inspection fee, construction management plan and pre-construction meeting will be complete prior to the start of site work as the condition requires.

7. Portland's Inspection Division will conduct the review of the building plans, so we recommend that those be submitted to the division for review as soon as possible.

STATUS:

Building plans will be submitted to the Inspection Division as soon as possible.

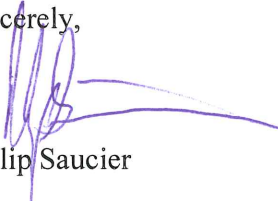
8. Please be aware that you may need other permits or licenses from the Department of Public Services for any of the work proposed in the street and to implement the construction management plan.

STATUS:

The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing including a review of other necessary permits or licenses.

We hope this letter is helpful. Please feel free to call us if you would like further clarification or documentation for any of these conditions. We will forward the remaining items to you as soon as possible.

Sincerely,



Philip Saucier

- cc: Demetrios Dasco, Village at Oceangate – Bay House
Marc Gagnon, Landmarc Construction
Jim Seymour, Sebago Technics
David White
Nathan Smith, Bernstein Shur
Thomas Hanson, Bernstein Shur