



February 6, 2015

Ms. Caitlin Cameron, Planner  
Planning and Development Department  
City of Portland, Maine  
389 Congress Street  
Portland, Maine 04101-3509

**Subject: 185 Fore Street  
Final Level III Site Plan and Subdivision Application**

Dear Ms. Cameron:

On behalf of Bateman Partners, LLC, we are pleased to provide the accompanying package of submission materials related to the proposed mixed-use building at 185 Fore Street. This submission package is intended to meet the City's Final Submission Requirements as outlined in the Level III Application procedures. The proposed project site is located on the northerly corner of the intersection of India and Fore Streets. The proposed development includes the construction of a four (4) story mixed-use building with retail uses on the ground floor and eight (8) residential units on the upper floors. Architectural renderings of the building are appended to this cover letter. The architectural design has been updated to reflect previous feedback from the City staff and Planning Board.

The development site is located within the City's B-5b Zoning District, and the proposed development complies with the permitted uses within the zone.

The applicant has a purchase option agreement for the project site as well as a lease agreement for parking within the Ocean Gateway Garage. As a result, the proposed site development is confined to the building footprint, utility infrastructure improvements, and restoration\ reconstruction of the adjacent sidewalks, etc.

Owen Haskell, Inc. has completed an ALTA Boundary and Topographic Survey Plan and Recording Plat for the project which is contained in the site plan set.

The Development Team will include Bateman Partners, LLC and Archetype PA as Architect. Bateman Partners, LLC has completed several commercial and residential projects within southern Maine, including the City of Portland. Bateman Partners, LLC is also known for working collaboratively with neighborhoods and stakeholders to achieve project goals. A public neighborhood informational meeting was previously held by the applicant on April 8, 2014.

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Accompanying this cover letter are the following materials:

- Architectural Rendering
- Site Plan Application
- Response to Staff Comments on Preliminary Application
- Section 1: Development Description
- Section 2: Right, Title and Interest
- Section 3: Technical and Financial Capacity
- Section 4: Construction Management Plan
- Section 5: Stormwater Management
- Section 6: Utilities
- Section 7: Solid Waste
- Section 8: Fire Safety
- Section 9: Conformity with Applicable Design Standards
- Section 10: Verification of Proposed HVAC Equipment
- Full and Reduced Sized Plans Including Architectural Floor Plans & Elevations

You will find in the accompanying materials, information including the Final Site Layout Plan that provides greater detail for the proposed site development activities. Final information pertaining to the project's utilities needs and statements regarding compliance with the City's Standards are contained within this submission.

On behalf of Bateman Partners, LLC, we look forward to your review of this project and are requesting to be placed on the next available workshop meeting with the Planning Board. Please find one (1) hard copy of the application materials including one set each of 11x17 and full size plans, along with a CD containing PDF files for all submitted materials. If you have any questions regarding these materials or the completeness of the application materials, please contact us within the next five (5) days.

Sincerely,

FAY, SPOFFORD & THORNDIKE



Joseph A. Laverriere, P.E.  
Senior Principal Engineer

JAL/smk/cmd

Attachments

c: Nathan Bateman – Bateman Partners, LLC  
David Lloyd – Archetype, PA





# 185 Fore Street

Portland, Maine

October 2014







Jeff Levine, AICP, Director  
Planning & Urban Development Department

### **Electronic Signature and Fee Payment Confirmation**

Notice: Your electronic signature is considered a legal signature per state law.

By digitally signing the attached document(s), you are signifying your understanding this is a legal document and your electronic signature is considered a **legal signature** per Maine state law. You are also signifying your intent on paying your fees by the opportunities below.

I, the undersigned, intend and acknowledge that no Site Plan or Historic Preservation Applications can be reviewed until payment of appropriate application fees are **paid in full** to the Inspections Office, City of Portland Maine by method noted below:

- Within 24-48 hours, once my complete application and corresponding paperwork has been electronically delivered, I intend to **call the Inspections Office** at 207-874-8703 and speak to an administrative representative and provide a credit/debit card over the phone.
- Within 24-48 hours, once my application and corresponding paperwork has been electronically delivered, I intend to ~~call the Inspections Office at 207-874-8703 and speak to an administrative representative and provide a credit/debit card over the phone.~~ **drop off my payment to the Inspections Office**
- I intend to deliver a payment method through the U.S. Postal Service mail once my application paperwork has been electronically delivered.

Applicant Signature:

February 6, 2015

Date:

Joseph A. Laverriere, P.E., FST (Authorized Agent)

February 6, 2015

I have provided digital copies and sent them on:

Date:

NOTE: All electronic paperwork must be delivered to [buildinginspections@portlandmaine.gov](mailto:buildinginspections@portlandmaine.gov) or by physical means i.e. a thumb drive or CD to the Inspections Office, City Hall, 3<sup>rd</sup> Floor, Room 315.



**PROJECT NAME:** 185 Fore Street

**PROPOSED DEVELOPMENT ADDRESS:**

185 Fore Street

**PROJECT DESCRIPTION:**

Construction of a four story mixed-use building. First floor contains 4,427 s.f. of retail use.

Second through fourth floors contain 8 residential units.

**CHART/BLOCK/LOT:** 20 / F /23

**PRELIMINARY PLAN**

05-05-14 (date)

**FINAL PLAN**

02-06-15 (date)

**CONTACT INFORMATION:**

<b>Applicant – must be owner, Lessee or Buyer</b> Name: Nathan Bateman Business Name, if applicable: Bateman Partners, LLC Address: P.O. Box 3572 City/State : Portland, ME Zip Code: 04104	<b>Applicant Contact Information</b> Work # 207.772.2992 Home# Cell # 207.332.5498 Fax# 207.772.1881 e-mail: nathan@batemanpartnersllc.com
<b>Owner – (if different from Applicant)</b> Name: East India Land Company LLC Address: 86 Newbury Street City/State : Portland, ME Zip Code: 04101	<b>Owner Contact Information</b> Work # Home# Cell # Fax# e-mail:
<b>Agent/ Representative</b> Name: Joseph A. Laverriere, P.E. Fay, Spofford & Thorndike Address: 778 Main Street, Suite 8 City/State : South Portland, ME Zip Code: 04106	<b>Agent/Representative Contact information</b> Work # 207.775.1121 Cell # 207.749.5088 e-mail: jlaverriere@fstinc.com
<b>Billing Information</b> Name: Nathan Bateman Bateman Partners, LLC Address: P.O. Box 3572 City/State : Portland, ME Zip Code: 04104	<b>Billing Information</b> Work # 207.772.2992 Cell # 207.332.5498 Fax# 207.772.1881 e-mail: nathan@batemanpartnersllc.com



<b>Engineer</b> Name: Joseph A. Laverriere, P.E. Fay, Spofford & Thorndike Address: 778 Main Street, Suite 8 City/State : South Portland, ME Zip Code: 04106	<b>Engineer Contact Information</b> Work # 207.775.1121 Cell # 207.749.5088 Fax# 207.879.0896 e-mail: jlaverriere@fstinc.com
<b>Surveyor</b> Name: John Swan Owen Haskell, Inc. Address: 390 U.S. Route 1 City/State : Falmouth, ME Zip Code: 04105	<b>Surveyor Contact Information</b> Work # 207.774.0424 Cell # Fax# e-mail: jswan@owenhaskell.com
<b>Architect</b> Name: David Lloyd Archetype, PA Address: 48 Union Wharf City/State : Portland, ME Zip Code: 04101	<b>Architect Contact Information</b> Work # 207.772.6022 Cell # Fax# e-mail: lloyd@archetypepa.com
<b>Attorney</b> Name: Ronald Ward Drummond Woodsum Address: 84 Marginal Way, Suite 600 City/State : Portland, ME Zip Code: 04101	<b>Attorney Contact Information</b> Work # 207.772.19410 Cell # Fax# 207.772.3627 e-mail: rward@dwmlaw.com

**APPLICATION FEES:**

**Check all reviews that apply. (Payment may be made by Cash or Check payable to the City of Portland.)**

<p><b>Level III Development (check applicable reviews)</b></p> <input checked="" type="checkbox"/> Less than 50,000 sq. ft. (\$500.00) <input type="checkbox"/> 50,000 - 100,000 sq. ft. (\$1,000) <input type="checkbox"/> 100,000 – 200,000 sq. ft. (\$2,000) <input type="checkbox"/> 200,000 – 300,000 sq. ft. (\$3,000) <input type="checkbox"/> over \$300,00 sq. ft. (\$5,000) <input type="checkbox"/> Parking lots over 11 spaces (\$1,000) <input type="checkbox"/> After-the-fact Review (\$1,000.00 plus applicable application fee) <p><b>Plan Amendments (check applicable reviews)</b></p> <input type="checkbox"/> Planning Staff Review (\$250) <input type="checkbox"/> Planning Board Review (\$500) <p>The City invoices separately for the following:</p> <ul style="list-style-type: none"> <li>• Notices (\$.75 each)</li> <li>• Legal Ad (% of total Ad)</li> <li>• Planning Review (\$40.00 hour)</li> <li>• Legal Review (\$75.00 hour)</li> </ul> <p>Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.</p>	<p><b>Other Reviews (check applicable reviews)</b></p> <input type="checkbox"/> Traffic Movement (\$1,000) <input checked="" type="checkbox"/> Stormwater Quality (\$250) <input checked="" type="checkbox"/> Subdivisions (\$500 + \$25/lot) # of Lots <u>8</u> x \$25/lot = <u>\$200</u> <input type="checkbox"/> Site Location (\$3,000, except for residential projects which shall be \$200/lot) # of Lots <u>    </u> x \$200/lot = <u>    </u> <input type="checkbox"/> Other _____ <input type="checkbox"/> Change of Use <input type="checkbox"/> Flood Plain <input type="checkbox"/> Shoreland <input type="checkbox"/> Design Review <input type="checkbox"/> Housing Replacement <input type="checkbox"/> Historic Preservation
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**APPLICATION SUBMISSION:**

1. All site plans and written application materials must be submitted electronically on a CD or DVD with each plan submitted as separate files, with individual file names (see submittal requirements document attached).
2. In addition, one (1) paper set of the plans (full size), one (1) paper set of plans (11 x 17), paper copy of written materials, and the application fee must be submitted to the Planning Division Office to start the review process.

The application must be complete, including but not limited to the contact information, project data, application checklists, wastewater capacity, plan for fire department review, and applicant signature. The submissions shall include one (1) paper packet with folded plans containing the following materials:

1. One (1) full size site plans that must be folded.
2. One (1) copy of all written materials or as follows, unless otherwise noted:
  - a. Application form that is completed and signed.
  - b. Cover letter stating the nature of the project.
  - c. All Written Submittals (Sec. 14-525 2. (c), including evidence of right, title and interest.
3. A stamped standard boundary survey prepared by a registered land surveyor at a scale not less than one inch to 50 feet.
4. Plans and maps based upon the boundary survey and containing the information found in the attached sample plan checklist.
5. One (1) set of plans reduced to 11 x 17.


**Refer to the application checklist for a detailed list of submission requirements.**

Portland’s development review process and requirements are outlined in the Land Use Code (Chapter 14), which includes the Subdivision Ordinance (Section 14-491) and the Site Plan Ordinance (Section 14-521). Portland’s Land Use Code is on the City’s web site <http://www.portlandmaine.gov/citycode/chapter014.pdf>

**APPLICANT SIGNATURE:**

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement’s authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

**This application is for a Level II Site Plan review. It is not a permit to begin construction. An approved site plan, a Performance Guarantee, Inspection Fee, Building Permit, and associated fees will be required prior to construction. Other Federal, State or local permits may be required prior to construction, which are the responsibility of the applicant to obtain.**

Signature of Applicant: 	Date: February 6, 2015
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Joseph A. Laverriere, P.E. - Agent



April 30, 2014

To Whom It May Concern:

Subject: Agent Authorization Letter

Bateman Partners LLC has retained Fay, Spofford & Thorndike to assist in the preparation of local, state and federal permit applications for the site aspects of a proposed mixed-use building in Portland, Maine. Fay, Spofford & Thorndike is authorized to act as an agent in matters related to these permits.

Sincerely,



Nathan Bateman  
Vice President  
Bateman Partners LLC



## PROJECT DATA

The following information is required where applicable, in order to complete the application.

<b>Total Area of Site</b>	6,947 sq. ft.
<b>Proposed Total Disturbed Area of the Site</b>	6,947 sq. ft.
If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with DEP and a Stormwater Management Permit, Chapter 500, with the City of Portland	
<b>Impervious Surface Area</b>	
Impervious Area (Total Existing)	Currently 580 sq. ft., Previously 4,500 sq. ft.
Impervious Area (Total Proposed)	6,600 sq. ft.
<b>Building Ground Floor Area and Total Floor Area</b>	
Building Footprint (Total Existing)	0 sq. ft.
Building Footprint (Total Proposed)	5,900+/- sq. ft.
Building Floor Area (Total Existing)	0 sq. ft.
Building Floor Area (Total Proposed)	22,766 sq. ft.
<b>Zoning</b>	
Existing	B-5b
Proposed, if applicable	B-5b
<b>Land Use</b>	
Existing	Vacant Lot
Proposed	Mixed-use Building (retail and residential)
<b>Residential, If applicable</b>	
# of Residential Units (Total Existing)	0
# of Residential Units (Total Proposed)	8
# of Lots (Total Proposed)	8
# of Affordable Housing Units (Total Proposed)	0
<b>Proposed Bedroom Mix</b>	
# of Efficiency Units (Total Proposed)	0
# of One-Bedroom Units (Total Proposed)	0
# of Two-Bedroom Units (Total Proposed)	7
# of Three-Bedroom Units (Total Proposed)	1
<b>Parking Spaces</b>	
# of Parking Spaces (Total Existing)	94 (lease agreement w/Ocean Gateway Garage )
# of Parking Spaces (Total Proposed)	44
# of Handicapped Spaces (Total Proposed)	Provided within Ocean Gateway Garage; no additional needed
<b>Bicycle Parking Spaces</b>	
# of Bicycle Spaces (Total Existing)	0
# of Bicycle Spaces (Total Proposed)	6 non-residential uses
<b>Estimated Cost of Project</b>	\$3,900,000



<b>PRELIMINARY PLAN (Optional) - Level III Site Plan</b>			
<b>Applicant Checklist</b>	<b>Planner Checklist</b>	<b># of Copies</b>	<b>GENERAL WRITTEN SUBMISSIONS CHECKLIST</b>
X		1	Completed Application form
X		1	Application fees
X		1	Written description of project
X		1	Evidence of right, title and interest
X		1	Evidence of state and/or federal approvals, if applicable
X		1	Written assessment of proposed project's compliance with applicable zoning requirements
X		1	Summary of existing and/or proposed easement, covenants, public or private rights-of-way, or other burdens on the site
X		1	Written requests for waivers from site plan or technical standards, if applicable.
X		1	Evidence of financial and technical capacity
		1	Traffic Analysis (may be preliminary, in nature, during the preliminary plan phase)
<b>Applicant Checklist</b>	<b>Planner Checklist</b>	<b># of Copies</b>	<b>SITE PLAN SUBMISSIONS CHECKLIST</b>
		1	Boundary Survey meeting the requirements of Section 13 of the City of Portland's Technical Manual
		1	<b>Preliminary Site Plan including the following: (information provided may be preliminary in nature during preliminary plan phase)</b>
			Proposed grading and contours;
			Existing structures with distances from property line;
			Proposed site layout and dimensions for all proposed structures (including piers, docks or wharves in Shoreland Zone), paved areas, and pedestrian and vehicle access ways;
			Preliminary design of proposed stormwater management system in accordance with Section 5 of the Technical Manual (note that Portland has a separate applicability section);
			Preliminary infrastructure improvements;
			Preliminary Landscape Plan in accordance with Section 4 of the Technical Manual;
			Location of significant natural features (including wetlands, ponds, watercourses, floodplains, significant wildlife habitats and fisheries or other important natural features) located on the site as defined in Section 14-526 (b) (1);
			Proposed buffers and preservation measures for significant natural features, as defined in Section 14-526 (b) (1);
			Location , dimensions and ownership of easements, public or private rights of way, both existing and proposed;
			Exterior building elevations.



<b>FINAL PLAN - Level III Site Plan</b>			
<b>Applicant Checklist</b>	<b>Planner Checklist</b>	<b># of Copies</b>	<b>GENERAL WRITTEN SUBMISSIONS CHECKLIST (* If applicant chooses to submit a Preliminary Plan, then the * items were submitted for that phase and only updates are required)</b>
X		1	* Completed Application form
X		1	* Application fees
X		1	* Written description of project
X		1	* Evidence of right, title and interest
		1	* Evidence of state and/or federal permits
X		1	* Written assessment of proposed project's specific compliance with applicable Zoning requirements
X		1	* Summary of existing and/or proposed easements, covenants, public or private rights-of-way, or other burdens on the site
X		1	* Evidence of financial and technical capacity
X		1	Construction Management Plan
X		1	A traffic study and other applicable transportation plans in accordance with Section 1 of the technical Manual, where applicable.
X		1	Written summary of significant natural features located on the site (Section 14-526 (b) (a))
X		1	Stormwater management plan and stormwater calculations
X		1	Written summary of project's consistency with related city master plans
X		1	Evidence of utility capacity to serve
X		1	Written summary of solid waste generation and proposed management of solid waste
X		1	A code summary referencing NFPA 1 and all Fire Department technical standards
X		1	Where applicable, an assessment of the development's consistency with any applicable design standards contained in Section 14-526 and in City of Portland Design Manual
X		1	Manufacturer's verification that all proposed HVAC and manufacturing equipment meets applicable state and federal emissions requirements.



Applicant Checklist	Planner Checklist	# of Copies	<b>SITE PLAN SUBMISSIONS CHECKLIST</b> (* If applicant chooses to submit a Preliminary Plan, then the * items were submitted for that phase and only updates are required)
X		1	* Boundary Survey meeting the requirements of Section 13 of the City of Portland's Technical Manual
X		1	<b>Final Site Plans including the following:</b>
X			Existing and proposed structures, as applicable, and distance from property line (including location of proposed piers, docks or wharves if in Shoreland Zone);
X			Existing and proposed structures on parcels abutting site;
X			All streets and intersections adjacent to the site and any proposed geometric modifications to those streets or intersections;
X			Location, dimensions and materials of all existing and proposed driveways, vehicle and pedestrian access ways, and bicycle access ways, with corresponding curb lines;
X			Engineered construction specifications and cross-sectional drawings for all proposed driveways, paved areas, sidewalks;
X			Location and dimensions of all proposed loading areas including turning templates for applicable design delivery vehicles;
X			Existing and proposed public transit infrastructure with applicable dimensions and engineering specifications;
X			Location of existing and proposed vehicle and bicycle parking spaces with applicable dimensional and engineering information;
X			Location of all snow storage areas and/or a snow removal plan;
X			A traffic control plan as detailed in Section 1 of the Technical Manual;
X			Proposed buffers and preservation measures for significant natural features, where applicable, as defined in Section 14-526(b)(1);
X			Location and proposed alteration to any watercourse;
X			A delineation of wetlands boundaries prepared by a qualified professional as detailed in Section 8 of the Technical Manual;
X			Proposed buffers and preservation measures for wetlands;
X			Existing soil conditions and location of test pits and test borings;
X			Existing vegetation to be preserved, proposed site landscaping, screening and proposed street trees, as applicable;
X			A stormwater management and drainage plan, in accordance with Section 5 of the Technical Manual;
X			Grading plan;
X			Ground water protection measures;
X			Existing and proposed sewer mains and connections;

- Continued on next page -

X		Location of all existing and proposed fire hydrants and a life safety plan in accordance with Section 3 of the Technical Manual;
X		Location, sizing, and directional flows of all existing and proposed utilities within the project site and on all abutting streets;
X		Location and dimensions of off-premises public or publicly accessible infrastructure immediately adjacent to the site;
X		Location and size of all on site solid waste receptacles, including on site storage containers for recyclable materials for any commercial or industrial property;
X		Plans showing the location, ground floor area, floor plans and grade elevations for all buildings;
X		A shadow analysis as described in Section 11 of the Technical Manual, if applicable;
X		A note on the plan identifying the Historic Preservation designation and a copy of the Application for Certificate of Appropriateness, if applicable, as specified in Section Article IX, the Historic Preservation Ordinance;
X		Location and dimensions of all existing and proposed HVAC and mechanical equipment and all proposed screening, where applicable;
X		An exterior lighting plan in accordance with Section 12 of the Technical Manual;
X		A signage plan showing the location, dimensions, height and setback of all existing and proposed signs;
X		Location, dimensions and ownership of easements, public or private rights of way, both existing and proposed.





**185 FORE STREET  
RESPONSE TO STAFF COMMENTS ON PRELIMINARY APPLICATION**

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On behalf of Bateman Partners, LLC, we are pleased to provide the following responses to the Preliminary Review Comments related to the Subdivision and Site Plan Application for the proposed mixed-use building at 185 Fore Street. For ease of reference we have repeated the comments in *italics*, followed by our response.

The following revisions have been made to the Site Plan Application in response to comments contained in the June 19, 2014 Planning Memo prior to the June 24, 2014 Planning Board Meeting:

*Comment 1:*

*The project is required to provide 6 street trees in total and the applicant will need to provide a waiver request for the financial contribution of the remaining 4 trees not provided on site.*

Response:

The proposed landscape plan includes two street trees along India Street. As discussed previously, further street trees are not possible due to conflicts with underground electrical duct banks that are located beneath the India Street and Fore Street sidewalks. The applicant has provided additional landscape plants along the India Street and Fore Street building frontages that we believe provide a nice landscape element into the streetscape. Anthony Muench (Landscape Architect for the project) met to review this plan with the City Arborist, Jeff Tarling, and received favorable feedback.

*Comment 2:*

*A final plan meeting all of the submission requirements is required, including a recording plat meeting all of the provisions of the Subdivision Ordinance.*

Response:

A complete final Site Plan and Subdivision Application is appended to this letter including a recording plat prepared by Owen Haskell, Inc.

*Comment 3:*

*The staff asked for additional information regarding the need for 94 parking spaces for this project as outlined in the current leased parking agreement.*

Response to Staff Comments on Preliminary Application

February 6, 2015

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Response:

As stated previously, the leased parking agreement was developed several years ago and made a part of the sale of the property. The lease parking agreement provides “up to” 96 parking spaces for the site. It is the applicant’s intent to secure 44 parking spaces for the site to provide:

- 20 spaces for the first floor retail/office use
- 24 spaces for the residential use (8 units), which provides 3 parking spaces per residential unit

Comment 4:

*Additional construction management plan notes need to be provided in the plan set per the comments of Captain Pirone.*

Response:

As requested, Notes 5 and 6 have been added to the construction management notes contained on Sheet C-1.1 of the plan set.

**WOODARD & CURRAN COMMENTS DATED JULY 2, 2014**

A separate response to these stormwater comments was prepared by FST and submitted to the City on July 8, 2014.

**JEFF TARLING COMMENT DATED JULY 1, 2014**

Comment 1:

*This plan adds needed green landscape element into the street-scape. The only questions is on India Street @ Fore Street the closest tree pit to Fore Street, is there adequate clearance for pedestrians between the street tree and new planter?*

Response:

The minimum sidewalk width is 6’ between edge of street tree grade and edge of landscape planter.



Response to Staff Comments on Preliminary Application  
February 6, 2015  
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**DAVID MARGOLIS-PINEO COMMENTS DATED JULY 7, 2014 AND JULY 8, 2014**

Comment 10 (7/7/14):

*The City is reviewing wiring options for the proposed three new street lights. It is the City's intent to acquire ownership of these lights. Therefore a meter may be necessary for power billing purposes. The applicant should verify that the light specified for this location meets City of Portland lighting standards.*

Response:

The proposed new light fixture and pole will match the existing fixtures and poles on Fore and India Streets, which will be relocated as part of the project.

Comment 11 (7/7/14):

*At this time, the applicant is proposing one new and one relocated light pole with no stated consideration of adding a meter so that the City would retain ownership of the lights. It has been the City's intent that all new street lights would be metered for City ownership.*

Response:

The new pole mounted light will be connected to the existing light circuit in India Street. This is shown on the Site Electrical Plan (Sheet E1.01).

Comment 12 (7/7/14):

*The applicant is proposing to encroach the road right of way with planters. A license will be required from the City to facilitate.*

Response:

The applicant is prepared to execute the standard City License Agreement for the landscape planter encroachment within the India Street right-of-way. Please forward a copy of the license agreement language for review and eventual execution by the applicant. The extent of the landscape planter encroachments within the right of way and requirement for a license agreement has been noted on the recording plat prepared by Owen Haskell.

Comment 1 (Email 7/8/14):

*The proposed ramp to serve the crosswalk at Fore St. is not ADA compliant and therefore not acceptable as shown. City staff is willing to meet with the applicant to discuss options.*

Response to Staff Comments on Preliminary Application

February 6, 2015

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Response:

The ADA ramp configuration has been modified to be compliant with ADA Standards.

Comment 2 (Email 7/8/14):

*The ramp to serve across Fore St. (to the pump station) does look like it does not have a 4' landing at the top (unless there is an overhang to the building providing it). If not, it seems the ramp could be slid to the west; that might provide better alignment for people traveling/continuing along India St.*

Response:

As indicated above, the ADA ramp configuration has been modified to be compliant with ADA standards.

**JENNIFER THOMPSON (LEGAL) COMMENTS DATED JULY 3, 2014**

Comment 1:

*As we discussed yesterday, very briefly, I'm not sure what the City's preference is with respect to the lease term on these agreements. I have looked at a couple and they tend to be around 25 or 30 years with options to renew. This seems to fit within that general window. The term on these is 30 years with rights of renewal, so I think they're likely long enough.*

Response:

The applicant is agreeable to a 30-year term with rights of renewal.

Comment 2:

*The requirement that parking be provided should be included in the condo docs, yes. As written, these agreements do not contemplate assigned parking spaces so I don't think we necessarily need to require that. It will be important, however, to specify in the condo docs and on the plans that unit owners are entitled to parking. And, yes, I want to review the condo docs.*

Response:

The applicant is proposing to execute the parking lease agreement to provide 44 total parking spaces for 185 Fore Street project. This amount of parking will provide:

- 20 spaces for the retail/office use.
- 24 spaces for the residential use (8 units), which provides 3 parking spaces per residential unit.



Response to Staff Comments on Preliminary Application

February 6, 2015

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### **REVISED PLANS FROM ARCHETYPE PA**

1. The building plans have been revised to provide added detail to the penthouses on the upper portion of the roof. This detail work includes enhanced cornice design & window trim. Archetype PA has provided close up views that are appended for the Board's review.
2. Archetype PA has modified the building design to open up the street front storefront at the building entry on India Street. The project team has also redesigned the landscaping and paving in the interest of developing a stronger dialog between first floor users and people passing by on India and Fore Street, thus helping to make the interior space be more connected to the exterior sidewalk activity.
3. Archetype PA has redesigned the north elevation to be in harmony with the western elevation. Archetype has maximized the amount of glazing we can provide under IBC Code for a building wall within 5 feet of the property line.
4. The board questioned the arbor detail over the top deck along India Street. In reviewing this detail it became apparent to Archetype that the elimination of this item was appropriate.
5. Exterior Finish Materials: In response to the Board's questions in regards to finish materials Archetype has provided the following information. The base of the building along Fore and India Street is predominately precast concrete and aluminum and glass storefront. Above this we have selected a mechanically attached brick. This is a real brick, cast as standard brick but ½ inch thick. This is attached to a hot dipped galvanized sheet and then grouted with a standard mortar mix. We will incorporate a drainage plane behind the brick which goes over a moisture barrier. We will be incorporating a colored mortar and also be calling out for bricks retuning at corner locations. This system will be designed to industry standards. The selection of this product is based upon less energy usage in making the brick, transporting the brick and less structure required to support full brick. The development of this technique has improved greatly over the past 10 years and we find it superior in the control of water penetration into the building compared with the full thickness brick cavity system.

The EIFS material is also designed to industry standards with a full drainage plane behind the moisture barrier. This is only used on the cornice and some of the vertical and horizontal detail elements of the elevation, primarily the corner of India and Fore, it is also the finish material used on the elevation facing the parking garage. Archetype can use the example of 100 Middle Street, which they built in the mid-eighties. On that project all of the upper cornices were an EIFS product. Again as with the brick careful detailing and water control is the key to providing a cost efficient and long lasting product. Archetype believes that these products allow the architect to design an energy efficient building and when detailed and installed properly, a long life.

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Attachment B – Owner’s Association Documents
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- Section 3: Attachment E – Letter of Financial Capacity
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- Section 6: Attachment H – Correspondence with Portland Water District
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**LIST OF PLANS**

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C-1.0	COVER SHEET
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A2.02	BUILDING ELEVATIONS

# 1. DEVELOPMENT DESCRIPTION

## 1.1 PROJECT OVERVIEW

Bateman Partners, LLC has a purchase agreement to acquire a 6,947 s.f. parcel of land (identified by the City Tax Assessor as Tax Map, Block, and Lot #20-F-23) that is located on the northerly corner of the intersection of India Street and Fore Street. The applicant is proposing to construct a four-story mixed-use building. The ground floor will contain retail uses and the upper floors will contain eight (8) residential units.

The applicant is seeking Site Plan and Subdivision Approval from the City of Portland Planning Authority. The objective is to obtain all approvals by April of this year, if possible, to allow construction to commence during the spring of 2015.

## 1.2 PROJECT PURPOSE AND NEED

The proposed project provides an opportunity to develop a mixed-use building on an undeveloped parcel that has readily available access to utility infrastructure, including the access to the Ocean Gateway Garage through a leased parking agreement. The project's community benefits include the following:

- Efficient reuse of a currently vacant lot.

- Provide opportunity for expanded retail space in the waterfront area.

- Provide additional residential units.

## 1.3 EXISTING CONDITIONS

The existing site is bounded to the southwest by India Street; to the southeast by Fore Street; to the northeast by the Ocean Street Garage; and the northwest by the Micucci's Grocery Market. The existing site was previously developed with a building associated with the American Hoist & Derrick Company; however, this building was previously razed with only remnants of the foundation visible on the site. After demolition of the former building, the building foundation was filled and the site graded to create a lawn area.

The land area slopes northwest to southeast towards Fore Street with approximately six (6) feet of grade differential. Most of the grade differential is along the India Street frontage. As mentioned previously, there are remnants of the former building foundation along India Street as well as a masonry wall along the northwesterly site boundary that forms a border to the Micucci parking lot. Finally, there is a portion of sheet pile wall within the northerly corner of the site that is believed to be a remnant of the temporary excavation system installed as part of the Ocean Gateway Garage development. The entire site is also enclosed with 6' high chain link fence.

Public utilities including water, sewer, natural gas, power and communications are readily available in the area. More information on utilities is provided in Section 7 of this application.



The street conditions around the block are described as follows:

Street Name	Roadway Description	On-street Parking	Sidewalk Description	Other
India Street	Approximately 41 foot wide paved way with two way traffic.	Yes. Observed parallel parking on the side of the street in front of the site.	Brick sidewalk on northerly end of site and bituminous sidewalk extending to Fore Street.	One catch basin located at intersection with Fore Street.
Fore Street	35 to 40 feet wide paved with two way traffic.	Yes. Observed parallel parking on the side of the street in front of the site.	Bituminous sidewalk in front of site. Brick sidewalk northeast of site in front of Ocean Gateway Garage.	

## 1.4 PROPOSED DEVELOPMENT

The development program includes the following components:

### 1.4.1 ON-SITE

The total building footprint is approximately 5,900 s.f. in size. The ground floor level will contain retail or office use with a total floor area of 4,427 s.f. The remaining ground floor area is associated with the utility/maintenance rooms for the building as well as the entry lobby, stairwells and elevator for the upper floors of the building. The second through fourth floors of the building will contain eight (8) residential units, including seven (7) two-bedroom units and one (1) three-bedroom unit. The fourth floor residential units will feature mezzanines. The building will not feature a basement.

The project developer is not seeking LEED designation, but the building will conform to the most current International Energy Conservation Code.

As shown on the Site Layout Plan (Sheet C-3.0), the proposed building will feature first floor commercial entrances on both India Street and Fore Street, and the entrance to the residential units will also be on Fore Street.

The proposed building will essentially fill the site. Exterior improvements include installation of new utility services to the building for water, sewer, natural gas, electric, telephone and communications. In addition, the proposed site improvements include installation of new street light fixtures (same style as recently installed as part of the City's Ocean Gateway Garage and Hancock Street developments) as well as replacement of the sidewalks along India and Fore Street with brick sidewalks. The applicant has secured parking within the Ocean Gateway Garage through a lease agreement; therefore, no new parking is proposed as part of the project.

### 1.4.2 OFF-SITE

No offsite improvements are proposed as part of the project.

## 1.5 LAND ORDINANCE REVIEW

### 1.5.1 OVERVIEW

The property currently lies within the City of Portland B-5b Urban Commercial Mixed Use District. The following Space and Bulk requirements apply to the B-5b Zone:

<b>B-5b Zone Summary Dimensional and Parking Requirements Applied to 185 Fore Street</b>		
<b>Zoning Requirements</b>	<b>Current B-5b Zoning Standard</b>	<b>Project Site Current Condition</b>
Minimum Lot Size	None	6,947 s.f.
Minimum Frontage	None	63.85' Fore Street
Minimum Front Yard	None	0.58' Fore Street
Minimum Side Yard	None	0.72'
Minimum Rear Yard	None	4.39'
Maximum Lot Coverage (Building Footprint)	100%	87%
Maximum Building Height	65 ft.	60'-4"
Parking Retail Use	1 space per 200 s.f. of first floor area in excess of 2,000 s.f. not used for bulk storage.	4,427 s.f. on first floor  12 parking spaces required
Parking Residential Use	1 space per unit	8 units  8 parking spaces required

### 1.5.2 SHORELAND ZONING

The site is not located within the Shoreland Zoning District.

## 1.6 STATE AND FEDERAL PERMITS

The project requires a Traffic Movement Permit from MaineDOT and State Fire Marshall Approval. The development is subject to Site Plan and Subdivision approval by the City of Portland and Building Permit(s) are also required.

## **1.7 EASEMENTS OR OTHER BURDENS**

Owen Haskell, Inc. has recently completed the property survey and there are no known easements on the property. The project site is subject to the conditions of a previous environmental cleanup effort that was associated with the American Hoist and Derrick Company. The environmental restrictions on the parcel are in the form of restrictive deed covenant. The condominium declaration has been prepared by the Applicant's attorneys at Drummond Woodsum. A copy of the condominium declaration is provided as Attachment B.

## **1.8 TRAFFIC**

The proposed "185 Fore Street" project, a retail and residential condominium project, is expected to generate approximately 14 vehicle trips during both the morning and afternoon peak hour time periods. The traffic evaluation and assessment of this project will be packaged with the larger "16 Middle Street" project and conducted as a single development project; including the application of and issuance of a MaineDOT Traffic Movement Permit (*Projects that generate in excess of 100 vehicle trips during any peak hour time period are required to obtain a Maine Department of Transportation Traffic Movement Permit (TMP)*). A TMP application, which will include traffic generation of the proposed "185 Fore Street" project, is currently being prepared and will be submitted to City Staff by when it is available). The combined trip generation of both proposed development projects is estimated at 139 vehicle trips during each peak commuter time period.

Manual turning movement counts have been performed between the peak commuter hours of 7:00 to 9:00 AM and 3:00 to 6:00 PM at the following locations and the data will be utilized in the performance of assessing the expected traffic impacts of both development projects:

1. India Street @ Fore Street
2. India Street @ Middle Street
3. Middle Street @ Hancock Street
4. Fore Street @ Hancock Street Extension

The most recent three-year roadway safety information (2011 through 2013) has been obtained from the Maine Department of Transportation's Safety Bureau for the study area roadway segments and intersections. Preliminary review of the data shows the frequency of traffic crashes is well below MaineDOT's threshold values for identification of a high crash location.

A Traffic Impact Study will be completed that combines the estimated peak hour trip generation of both proposed development projects. No changes to traffic patterns or offsite improvements are expected to be necessary as a result of the project.

## **1.9 SOILS/GEOTECHNICAL REVIEW**

A recent geotechnical investigation has not been performed for the site; however, Summit Geoenvironmental Services has been retained to provide geotechnical recommendations for the proposed building. It is anticipated that the new building will be supported on conventional spread footings; however, the final geotechnical investigation work has not yet been completed.



## **1.10 NATURAL FEATURES**

The development site does not contain any significant natural features including wetlands, vernal pools or other protected resources. The entire site parcel was previously developed; therefore, there are no historical nature areas or features remaining on the site.

## **1.11 UTILITIES AND STORMWATER**

The proposed project will involve installation of new utility services to the building. All new utility services will be provided from the franchise utilities available within India Street. The proposed locations of the new utility services are shown on the Utility Plan (Sheet C-5.0 of the plan set). More information on proposed utility services is provided in Section 7 of this application.

The City maintains a drainage system in India Street including a catch basin on the corner of India Street and Fore Street. The runoff flow regime from the development site will continue to discharge to the surrounding street gutters. A new roof drain leader is also proposed to connect into the existing catch basin in India Street, which connects to the combined sewer/storm drain system. More information on stormwater runoff from the site is provided in Section 5 of this application.

## **1.12 ATTACHMENTS**

Attachment A – Existing Site Photographs

Attachment B – Owner's Association Documents

**ATTACHMENT A**

**Existing Site Photographs**



**PHOTO 1 – View of project site from Fore Street**



**PHOTO 2 – View from Fore Street of shared alley between project site (left) and Ocean Gateway Garage (right)**



**FAY, SPOFFORD &  
THORNDIKE**  
778 Main Street, Suite 8  
South Portland, ME 04106  
Toll Free: 800.835.8666  
Main: 207.775.1121  
Fax: 207.879.0896

**Existing Site Photographs  
185 Fore Street – Portland, ME  
Photos Taken by Joe Laverriere on 04/30/14**





**PHOTO 3 – View of site from opposite side of intersection of  
India Street and Fore Street**



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**Existing Site Photographs  
185 Fore Street – Portland, ME  
Photos Taken by Joe Laverriere on 04/30/14**

**ATTACHMENT B**

**Owner's Association Documents**

**DECLARATION OF CONDOMINIUM  
185 FORE STREET CONDOMINIUM**

**ARTICLE 1  
DECLARATION OF CONDOMINIUM PROPERTY**

This Declaration of 185 Fore Street Condominium (“Declaration”) is executed by [Bateman Partners] LLC, a Maine limited liability company (“Declarant”), pursuant to the Maine Condominium Act, chapter 31 of Title 33 of the Maine Revised Statutes of 1964, as amended (“Condominium Act”).

**§1.1 Declaration of Property.** The Declarant as the owner in fee simple of the land located at 185 Fore Street in the City of Portland, County of Cumberland and State of Maine described in Exhibit A, the buildings and improvements located thereon and subject to and together with all easements, rights, privileges and appurtenances thereto (collectively the “Property”), HEREBY SUBMITS the Property to the Condominium Act in accordance with this Declaration, and establishes a condominium as defined in Section 1601-103(7) of the Condominium Act (“Condominium”) known as the 185 Fore Street Condominium. The name of the Unit Owners’ association is the 185 Fore Street Owner’s Association, a Maine nonprofit corporation (the “Association”). Initially, the Condominium consists of the Property and a Building consisting of 7 units known as Units 101, 201, 202, 203, 301, 302, 303, 401, and 402. Unit 101 shall be for commercial use, units 201, 202, 203, 301, 302, 303, 401, and 402 shall be used for residential purposes only.

As set forth in this Declaration, the Declarant reserves various Development Rights, Special Declarant Rights and easements, including without limitation the right to physically construct and legally create up to 10 Condominium Units with associated Limited Common Elements.

**§1.2 Applicability.** This Declaration shall govern the Property. All present and future owners, occupants and tenants, their guests, licensees, invitees, employees, agents, and any other person entering on the Property shall be subject to this Declaration, the Bylaws of the Association and to such Rules and Regulations of the Association, all of which shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest in or entering upon the Property.

**§1.3 Defined Terms.** Capitalized terms not otherwise defined in this Declaration or on the Plat and Plans shall have the meanings specified in the Condominium Act or the Association’s Bylaws.

**§1.4 Interpretation.** In the event of any conflict or discrepancy between this Declaration, the Bylaws, the Rules and Regulations, and the Plat and Plans, the provisions of this Declaration shall govern.

**ARTICLE 2**  
**DESCRIPTION OF PROPERTY**

**§2.1 Description of the Property.** A legal description of the Property included in the Condominium is set forth in **Exhibit A**. The location and dimensions of the Property included in the Condominium are depicted on the Condominium Plat entitled “Condominium Plat of 185 Fore Street Condominium” dated \_\_\_\_\_ as amended by Owen Haskell, Inc. recorded in said Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_ (the “Plat”), a reduced copy of which is attached hereto as **Exhibit B**.

**§2.2 Location and Dimensions of Buildings and Units.** The term “Building” means the building erected or to be erected on the Property containing one or more Units, as well as other improvements comprising a part of a building or intended to be used for purposes incidental to the use of a building. The proposed location and dimensions of the Buildings and other improvements which may be erected on the Property, including Common Elements, are shown on the Plat as depicted on **Exhibit B**.

The proposed location and dimensions of each Unit together with its appurtenant Limited Common Elements are depicted on the Floor Plans entitled “185 Fore Street Condominiums” dated \_\_\_\_\_ by Archetype Architects and recorded in said Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_ (the “Plans”), reduced copies of which are attached hereto as **Exhibit C**. The proposed location and dimensions of each Building and Unit are subject to change by the Declarant until such time as each Unit is legally created, and such improvements need not be built or may be built with configurations and locations different than those shown on the Plat and Plans, as further appears in Article 5 below.

**§2.3 Recorded Plat and Plans.** The original Plat and Plans and any amendments thereto shall be recorded with this Declaration in the Cumberland County Registry of Deeds.

**§2.4 Condominium Documents.** “Condominium Documents” means this Declaration, the Plat, the Plans, the Bylaws of the Association, and the Rules and Regulations adopted by the Board of Directors, and any amendments to any of the foregoing adopted from time to time.

**§2.5 Easements.** The Condominium is benefitted or encumbered by the following recorded easements and licenses appurtenant to or included in the condominium:

**[LIST OF EASEMENTS AND LICENSES TO BE INSERTED]**

**ARTICLE 3**  
**CONDOMINIUM UNITS**

**§3.1 Creation of Units and Subsequent Units.** Units 101, 201, 202, 203, 301, 302, 303, 401, and 402 are created under this Declaration. Unit 101 shall be a commercial unit referred to as the “Commercial Unit” and Units 201, 202, 203, 301, 302, 303, 401, and 402 shall be residential units referred to collectively as the “Residential Units”. Declarant



reserves development right to create additional units from the Commercial Unit, remove the Commercial Unit from the Condominium, or convert the Commercial Unit to common elements. Declarant retains no development rights with respect to the Residential Units.

**§3.2 Description of the Units.** “Unit” means a part of the Property designated for separate ownership or occupancy which has a direct exit to Limited Common Elements and Common Elements. For each Unit created from time to time pursuant to this Declaration, the identification number and approximate area are shown on the Plat and Plans of the Property as amended from time to time. Any internal room configuration shown on the Plans is illustrative only, and is not binding on an owner except that the structural support of the Building must be preserved.

Each Unit includes the following items:

- (a) All interior partitions (excepting those portions thereof which are load-bearing), interior doors and interior stairways wholly within the Unit;
- (b) Finish flooring, floor coverings, carpeting and the like, and finish wall and ceiling coverings (including paint, wallpaper, furring, gypsum board, moldings, and any other materials constituting any part of the finished surfaces thereof);
- (c) Windows and doors providing access to the Common Elements including their locks, hardware and glass, but excluding their frames, thresholds and sills;
- (d) Plumbing, kitchen and bathroom fixtures, the heating and ventilating equipment, water heaters, air conditioning systems and components thereof serving only a single Unit, if any, even if located outside of a Unit's boundaries, water heaters, kitchen appliances, and any fireplace(s) or hearth(s) provided that only propane, and no wood or other solid fuels, may be burned therein;
- (e) Electrical wiring, equipment outlets and lighting devices from the point where the feed wire enters the Unit's circuit breaker distribution box inwards, and portions of water and sewer utility lines, pipes and equipment serving only that Unit and located within its general boundary lines as herein described; and,
- (f) The interior of the attics, and, if a part of the unit, the basement.

A Unit generally does not include: the exterior walls, the roof, rafters and foundation, land; the pipes, wires, conduits, flues, ducts, pipes, or other heating and utility lines running through a Unit which serve more than one Unit or which serve the Common Elements or which serve another Unit.

Each Unit and the Common Elements shall have any easement for lateral and subjacent support from every other Unit and the Common Elements, and shall have the easement for encroachments established under Section 1602-114 of the Condominium Act. In addition, each Unit Owner has an unrestricted, perpetual right of ingress and egress to his or her Unit, which automatically transfers with a transfer of title to the Unit. Any conveyance, encumbrance, judicial sale, or other transfer (whether voluntary or involuntary) of an interest in the Common Elements shall be void unless the Unit to which that Common Element interest is allocated is also transferred.

**§3.3 Unit Boundaries.** The boundaries of each Unit subsequently created under this Declaration shall be shown on the Plat and Plans, and shall consist of:

(a) *Horizontal Boundary.* The upper and lower boundaries of each Unit are generally the following boundaries extended to an intersection with the vertical (perimeter) boundaries:

1. Upper Boundary: The planes at the lower surfaces of the roof or dormer rafter lines which directly support the roof sheathing, including the upper (outside) side of the gypsum board of the ceiling and any other materials constituting any part of the finished surfaces thereof, if any, extending to the intersection with the vertical boundaries.

2. Lower Boundary: The horizontal plane at the upper surface of the undecorated surface of the basement concrete floor slab extending to the intersection with the vertical boundaries.

(b) *Vertical Boundaries.* The vertical boundaries of each Unit shall be the vertical planes at the stud line at the exterior or outer-most surface of the gypsum-board, sheetrock, or other wall materials forming its exterior or common walls, extended to the intersections with each other and with the horizontal boundaries.

(c) *Interior Finishes.* The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, wallpaper, finished flooring and any other materials constituting any part of the finished surfaces thereon located within the boundaries of the Unit.

(d) *Interior Space.* All other spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(e) *Relocation.* Relocation of boundaries between Units is permitted by amendment to the Declaration in compliance with the provisions of the Condominium Act. The subdivision of Units is not permitted.

**§3.4 Allocated Interests.** The term “Allocated Interests” means the Common Element Interest, the Residential Common Element Interest, the Common Expense Liability, the Residential Common Expense Liability, and the voting rights in the Association allocated to each Unit pursuant to this Declaration. The term “Common Element Interest” means the percentage of undivided interest in the Common Elements appurtenant to each Unit. The term “Common Expense Liability” means the allocation to each Unit of the respective liability for Common Expenses. The term “Residential Common Element Interest” means the percentage of undivided interest in the Residential Common Elements appurtenant to each Residential Unit. The term “Residential Common Expense Liability” means the allocation to each Unit of the respective liability for Residential Common Expenses. Generally the Common Expense Liability and Residential Common Expense allocated to a Unit is a percentage equal to the Common Element Interest or Residential Common Element Interest appurtenant to such Unit. The Allocated Interests of each Unit shall be set forth in **Exhibit D**.

The percentage of each Unit's Common Element Interest and Common Expense Liability is allocated by a formula represented by a fraction wherein the numerator is 1 and the denominator is the total number of Units which have been created in the Condominium subject to rounding in order to permit ease of administration, provided however that the percentage stated in **Exhibit D** (as it may be amended) shall prevail in any event. Each Unit shall each have one vote in the Association on a formula of one vote per Unit to permit equality among Units.

The percentage of each Residential Unit's Residential Common Element Interest and Residential Common Expense Liability is allocated by a formula represented by a fraction wherein the numerator is 1 and the denominator is the total number of Residential Units which have been created in the Condominium subject to rounding in order to permit ease of administration, provided however that the percentage stated in **Exhibit D** (as it may be amended) shall prevail in any event.

**§3.5. Alterations by Unit Owner.** Subject to this Declaration, the Bylaws and the Rules and Regulations of the Association as amended from time to time, a Unit Owner may make nonstructural improvements and alterations within the interior of the Unit. However, no Unit Owner may make any improvements or alterations or do any work whatsoever which would impair the structural integrity or mechanical systems or the walls separating units or life safety systems of a Building, lessen the support of any portion of the Condominium, or jeopardize the soundness or safety of the Property.

No Unit Owner shall alter any of the Common Elements or paint or otherwise change the appearance of the Common Elements (including without limitation the Limited Common Elements) or paint or otherwise change the exterior appearance of the Unit (including, but not limited to, the exterior surfaces of doors or windows leading to a Common Element or a Limited Common Element) or any other portion of the Condominium, without the prior written approval of the Board of Directors of the Association.

#### **ARTICLE 4 COMMON ELEMENTS, LIMITED COMMON ELEMENTS**

**§4.1 Common Elements.** "Common Elements" means the entire Property other than the Units, and includes:

- i. The land, together with the benefit of and subject to all the accompanying rights and easements described in Exhibit A, and all landscaping, vegetation, trees and drives;
- ii. The foundations, roof, exterior walls, chimneys, flues and all structural and load bearing portions of the buildings;
- iii. All utility lines, pipes, wires, electrical and transmission wires and conduits, any life safety systems, distribution pipes, pumping station, and water and sewer utility lines which serve more than one Unit or which serve one Unit only but are located outside its boundary line (excepting

lines and equipment owned by public and municipal utilities and tanks and lines owned by the propane supplier); and

- iv. All other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use, except as otherwise expressly provided in this Declaration.

**§4.2 Limited Common Elements.** “Limited Common Elements” means those portions of the Common Elements where the exclusive use is reserved to one or more, but fewer than all, of the Units in accordance with this Declaration. “Residential Limited Common Elements” means those portions of the Common Elements where the exclusive use is reserved to the Residential Owners. Limited Common Elements and Residential Limited Common Elements consist of the following:

- i. water, sewer or other utility lines, water heaters, electrical circuit breaker boxes and other fixtures designed to serve a single Unit but which are not a defined part of the Unit are Limited Common Elements allocated exclusively to that Unit;
- ii. the exterior deck or patio areas, walks, and the porch areas, shown and assigned as Limited Common Elements on the Plans;
- iii. any door steps, stoops, thresholds, doors and windows and their frames and sills and any other fixture designed to serve a single Unit but located outside its boundary, and the chimney, and flue, servicing a Unit;
- iv. the air space above a Unit and the land and foundation below a Unit;
- v. storage closets designated by unit number allocated to each of the Residential Units;
- vi. trash and recycling room, mailboxes and vestibules located on the first floor, the elevator, stairways, and hallways on the second, third, and fourth floors, and the garage access on the third floor all as depicted on the Plans and allocated as Limited Common Elements to the Residential Units; and
- vii. the portions of the Property shown on the Plat and Plans or as described as Limited Common Elements pursuant to Section 1602-102(2) and (4) of the Condominium Act.

The allocation of Limited Common Elements cannot be altered except in compliance with the Condominium Act, and with the written consent of the Owners and Mortgagees of record of the Units affected by the reallocation of Limited Common Elements.

Unit Owners having the exclusive right to use terraces or balconies may, at their sole cost and expense, install certain planters and/or privacy barriers with the prior written consent of the Homeowner’s Association, which consent shall not be unreasonably withheld, conditioned or delayed.



**§4.3 Common Elements to Remain Undivided.** The Common Element Interest of a Unit shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition and any mortgage or other encumbrance of any Unit shall include the Common Element Interest, whether or not expressly referred to in the instrument making such transfer. The Common Elements shall remain undivided and no action for partition or division of any party shall be permitted, unless otherwise provided by law and permitted by this Declaration.

**§4.4 Connection of Adjoining Units and Limited Common Areas.** If the record owners of the subject Unit(s) affirmatively elect, with the written approval of the Board of Directors of the association based on each owner's compliance with the standards set forth hereinafter, all to be evidenced by a recorded instrument duly executed and acknowledged, that portion of the Common Elements located between the boundary lines of adjoining Units or located between a Unit and an adjoining Limited Common Element (with the consent of any other Units sharing the same), may be thereby subjected to an easement in favor of each such Unit respectively running to the midpoint of the space between each Unit or to the Limited Common Element for the removal and alteration of any intervening partition and the creation of apertures therein for passage back-and forth between the two Units or to the Limited Common Element, and for the installation of stairs, doors, windows and frames appurtenant thereto. The owners shall be strictly liable for any resulting damage. At all times after such election each Unit Owner: shall preserve and maintain the structural integrity and architectural style, the mechanical and utility systems, and the support of all portions of the Property; and shall strictly comply with all fire, building code and other governmental laws, ordinances and requirements. Any such Unit Owner or his respective heirs, mortgagees or assigns, may at any time revoke such election by instrument duly executed and acknowledged served on the other such owners and duly recorded, and thereafter may seal up passageways and/or remove the stairs, doors and their frames, and/or install a permanent wall, floor ceiling or other partitions, at all times preserving the structural integrity, the mechanical and utility systems and support of all portions of the Property. Nothing contained herein shall be deemed to merge or otherwise affect the separate identity, configuration or the boundaries of said Units.

**§4.5 Alteration of Common Elements by the Declarant.** Until all Units have been sold and the Declarant's obligations under purchase and sale agreements for all Units have been satisfied, the Declarant reserves the right to modify, alter, repair or improve portions of the Common Elements, including without limitation, any equipment, fixtures and appurtenances, and further reserves an easement over the Common Elements in order to discharge its obligations and exercise any Declarant Rights, whether arising hereunder or under the Condominium Act.

## **ARTICLE 5 DECLARANT'S RIGHTS**

**§5.1 Development Rights.** The Declarant reserves the rights:

- (a) Until the construction, marketing and sale of all Units is completed, including

any future Units which may be created hereunder, to locate in the Common Elements and Units of the Property, even though not depicted on the Plat and Plans, and grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of public utility lines, wires, pipes, conduits and facilities servicing or burdening the Property including, but not limited to, water, electric, telephone, cable television, fuel, sewer, and surface and subsurface drainage, provided however that no such easement shall be effective until of record, that no such easements may be granted through Units sold by Declarant to third party who is not a successor Declarant and that the Common Elements shall be promptly restored upon installation and repair;

(b) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;

(c) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to use the Common Elements for ingress and egress, for the construction, reconstruction, maintenance, repair, renovation, replacement or correction of the Units or Common Elements including without limitation the movement and temporary storage of construction materials and equipment, the right of vehicular and pedestrian access, the right to park motor vehicles, and for the installation of signs and lighting for sales and promotional purposes;

(d) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to operate and relocate construction, sales, leasing and management offices; permit prospective tenants, purchasers, lenders, appraisers, and others to visit the offices and use the Common Elements and use unsold Units for construction, sales, leasing and display purposes;

(e) Appoint and remove members of the Board of Directors and Officers of the Association in accordance with Section 6.2 of this Declaration;

(f) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to approve of the creation of easements between adjoining Units or between a Unit and an adjoining limited common element in accordance with Section 4.4 of the Declaration in accordance with the standards set forth therein;

(g) Until the expiration of any applicable warranty established by law or agreement, the Declarant, its contractors, agents and employees shall have the right of entry into a Unit to perform warranty-related work, whether for the benefit of any Unit or any other Unit;

(h) Until the construction, marketing and sale of all Units is completed, including any future Units which may be created hereunder, to grant easements;

(i) Those rights established under Section 4.5 of the Declaration;

(j) To create additional units from the Commercial Unit, remove the

Commercial Unit from the Condominium, or convert the Commercial Unit to common elements;

- (k) Those rights established under the Condominium Act.

The exercise of Development Rights shall be subject to the following restrictions:

- i. No changes shall be made to the site plan and subdivision approval by the City of Portland Planning Board on \_\_\_\_\_ and the recorded site plan of 185 Fore Street Condominium by Owen Haskell, Inc. duly recorded in said Registry of Deeds in Plan Book \_\_\_, Page \_\_\_ unless any applicable approval is received pursuant to the City of Portland's Land Use Ordinances to the extent applicable.
- ii. Declaration of Covenants.

**§5.2 Assignment.** All or any part of the rights, powers or reservations of Declarant contained in this Declaration may be assigned by Declarant to any person or entity which will assume the duties and obligations of Declarant related to the rights, powers or reservations assigned. Upon the recording of an assignment of such rights, powers or reservations pursuant to which the assignee assumes the duties and obligations of Declarant related thereto, the assignee shall become a successor Declarant as to such rights, powers or reservations assigned and shall have the same rights and powers and be subject to the same duties and obligations as are given to and assumed by Declarant herein, and Declarant shall be relieved from all liability with respect to the rights, powers, reservations, duties and obligations hereunder which are assumed by the assignee.

#### **§5.5 Amendment, Waiver, Etc.**

This ARTICLE 5 and Sections 4.4 and 4.5 shall not be amended or waived without the consent of the Declarant duly recorded in said Registry of Deeds.

The rights and benefits of ARTICLE 5 and all other rights of Declarant set forth in this Declaration, the Bylaws or otherwise, as amended from time to time, may be transferred in whole or part by recorded instrument specifically referring to this Section and executed by Declarant and its successor or assignee.

The Declarant shall have the right to waive the Development and Special Declarant Rights reserved hereunder in whole or part by an written instrument provided that such waiver shall only be effective upon recording in said Registry of Deeds and such waiver shall be subject to the limitations of Section 1603-103(d) of the Act regarding Declarant Control of the Association.

## **ARTICLE 6 CONDOMINIUM ASSOCIATION**

**§6.1 The Association.** The term "Association" means the association of the Unit Owners organized pursuant to Section 1603-101 of the Condominium Act as a nonprofit corporation under the Maine Non Profit Corporation Act. The membership of the

Association at all times shall consist exclusively of all Unit Owners, or in the event of a termination of the Condominium as provided in the Condominium Act, of all former Unit Owners entitled to distributions of proceeds, or their heirs, successors or assigns. Persons having an interest in a Unit solely as security for an obligation shall not be considered members.

Each Unit Owner shall automatically become a member of the Association, which membership shall continue as long as she or he continues as a Unit Owner, and upon the termination of the interest in the Condominium, his or her membership and any interest in the assets of the Association shall be automatically transferred and inure to the next Unit Owner or Owners succeeding him in interest.

The Association shall have all the powers granted pursuant to its Bylaws, the Condominium Act and the Maine Non Profit Corporation Act.

**§6.2 Board of Directors Powers; Declarant Control Period.** Except as otherwise provided in Section 1603-103(b) of the Condominium Act, the Board of Directors may act on behalf of the Association and shall have all of the powers necessary or appropriate for the administration of Association.

During the Declarant Control Period, the Board of Directors shall be composed of three (3) natural persons. The term “Declarant Control Period” means the period which extends from the date of the recording of this Declaration until the earlier of (a) seven (7) years following the conveyance of the first Unit to a Purchaser or (b) sixty (60) days after the conveyance of 75% of the Units, other than a conveyance to a successor Declarant. The Declarant shall have the right during the Declarant Control Period to appoint, remove and replace from time to time any and all members of the Board of Directors, and officers of the Association, without the necessity of obtaining resignations. The directors appointed by the Declarant need not be Unit Owners.

Following the expiration of Declarant Control Period, the affairs of the Association shall be governed by a Board of Directors composed of no less than three (3) and no more than seven (7) natural persons, the exact number of which shall be established by the Bylaws of the Association. A majority of the members at the Board of Directors shall be Unit Owners or spouses of Unit Owners or in the case of a Unit Owner which is a corporation, limited liability company, partnership, trust or estate or other legal entity, a designated agent thereof.

The transition from Declarant-appointed members of the Board of Directors to the Unit Owners generally shall occur no later than the earlier of (a) sixty (60) days after the conveyance of 75% of the Units to purchasers other than a successor Declarant, or (b) seven (7) years following conveyance of the first Unit to a Purchaser, or (c) at such earlier date as the Declarant in its sole discretion shall specify. Prior to the expiration of the Declarant Control Period, a transition meeting of the Association and a transition election shall be held at which all of the members of the Board of Directors and officers of the Association appointed by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns any Units, shall thereupon elect a Board of Directors to act

in the place and stead of those resigning.

By written notice duly recorded in said Registry of Deeds specifically referring to this Section, the Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors prior to the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before such action can become effective.

**§6.3 Bylaws.** The initial bylaws of the Association are attached hereto as **Exhibit E**.

**§6.4 Rules and Regulations.** The Board of Directors shall have the power from time to time to adopt, amend and enforce Rules and Regulations relative to the operation, use and occupancy of the Units and the Common Elements, consistent with the provisions of this Declaration, Bylaws and the Condominium Act including, but not limited to, the appointment of such committees and the enactment and enforcement of such enforcement procedures and penalties for violations as the Board of Directors shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, by means of appropriate resolutions duly approved by the Board of Directors. Notice of such Rules and Regulations and any amendment thereto shall be sent to each Owner or occupant of a Unit promptly after the adoption thereof, and shall bind all Owners, their heirs and assigns, any all tenants, invitees, guests and other persons entering upon the Property.

**§6.5 Parking.** The Association shall have the right and responsibility to assume that certain Parking Lease dated May 1, 2013 by and between Ocean Gateway Garage, LLC and East India Land Company LLC (the "Parking Lease"). The Association shall fulfill all of the Tenant's obligations thereunder, including payment of fees for parking assessable against a Unit Owner. The Association shall establish rules regarding the allocation of parking spaces to Unit Owners and with respect to the obligation of Unit Owners to make payments required under the Parking Lease, which payments shall not be deemed common expenses by may be separately assessed against a Unit Owner who fails to make such payments as may be required.

## **ARTICLE 7 COMMON CHARGES AND ASSESSMENTS**

**§7.1 Common Expenses and Service Charges.** "Common Expenses" include, but are not limited to, such costs and expenses established by the Condominium Act, by this Declaration, by the Bylaws, or by the Board of Directors in connection with the administration, operation, maintenance and repair of the Condominium and the Property and the rendering to Unit Owners of all related services.

"Limited Common Expenses" means the Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element, which shall be assessed



against the Units to which the appurtenant Limited Common Element is assigned in proportion to the relative Common Expense Liabilities of such Units, as the Board of Directors may periodically establish and determine. If all Units have similar Limited Common Elements, then all Units shall pay such expenses in accordance with their Common Expense Liabilities.

“Residential Limited Common Expenses” means the Common Expenses associated with the maintenance, repair or replacement of the Limited Common Elements allocated to the Residential Units, which shall be assessed against the owners of Residential Units in proportion to the relative Residential Common Expense Liabilities of such Units, as the Board of Directors may periodically establish and determine.

“Service Charges” means charges for services benefiting fewer than all the Units, which area assessed exclusively against the Unit or Units benefited in accordance with the use of such services as permitted by Section 1603-115(c) of the Condominium Act and the Bylaws.

All expenses for the administration, operation, maintenance and repair of the condominium and the Property shall be borne by the Unit Owners, by means of assessments as set forth herein. In accordance with the requirements of the City of Portland Planning Board, the City of Portland shall have no responsibility whatsoever to provide services in connection with such administration, operation, maintenance and repair.

**§7.2 Allocation and Payment of Assessments of Common Expenses.** The total amount of common expenses shall be assessed to the Units as follows.

(a) The Common Expenses that are not otherwise assessed as Limited Common Expenses, Residential Limited Common Expenses, or Service Charges shall be assessed against all the Units in proportion to the relative Common Expense Liabilities and Residential Common Expense Liabilities as set forth herein.

(b) If the Board of Directors determines that a Limited Common Expense benefits more than a single Unit in a manner which is not uniform among all Units, then such Limited Common Expense shall be assessed solely against the benefited Units benefited in proportion to the relative Common Expense liabilities of such Units as between themselves, all as the Board of Directors may periodically determine. If a Limited Common Expense only benefits a single Unit, that Limited Common Expense shall be assessed solely against the Unit benefited, as the Board of Directors shall determine.

(c) For electricity, telephone and cable television services, and, if separately metered, water and sewer, each Unit Owner shall promptly pay the bills for such services consumed or used in his or her Unit. Any electricity serving the Common Elements, and water and sewer if not separately metered shall be assessed to each Unit as a Common Expense, subject of the right of the Association to submeter and then separately charge for water and sewer services supplied to the Units as Service Charges.

Fuel shall be supplied through public utilities. Such utilities shall be separately billed to each Unit pursuant to a supply contract with the Association, and in accordance with such rules and regulations as may be established from time to time by the Association.

(d) Each Unit is subject to a lien in favor of the Association for the unpaid Common Expenses, Limited Common Expenses, Service Charges and penalties, fines, interest and costs of collection including reasonable attorneys' fees, all as provided in the Condominium Act, the Declaration and the Bylaws.

(e) In any event no later than 60 days after the first Unit is conveyed, all Unit owners including the Declarant shall commence paying monthly common charges to the Association for all Units which have been legally created and submitted to the Condominium.

**§7.3 Service Charges.** The Association shall have the express power to separately assess a Unit and the owner thereof as a "Service Charge" for services rendered to that Unit. Such Service Charge assessments shall constitute a lien on the Unit with the same status as a lien for Common Expense liability assessments under the Condominium Act, this Declaration and Bylaws, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien.

#### **§7.4 Payment of and Lien for Assessments, Service Charges, Fines, Etc.**

(a) Each Unit Owner shall pay to the Association or its designee the following amounts: (i) on the first day of each month or on such other date that the Board of Directors may determine, one-twelfth (1/12th) of the common charges for Common Expenses including Limited Common Expenses, and Service Charges and revised Common Expenses including revised Limited Common Expenses, assessed against his Unit; (ii) all special assessments and any other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations or the Condominium Act which are assessed against Unit Owners; and (iii) fines, penalties and fees as provided by this Declaration, the Bylaws or the Condominium Act, all interest and late charges and legal fees and other costs of collection thereof.

If for any reason the Association shall revise its annual budget and as a result the Common Expenses or Limited Common Expenses are increased, then commencing on the next day assessments are due each Unit Owner shall pay to the Association or its authorized representative such revised annual Common Expenses, including Limited Common Expenses, assessed against his Unit.

(b) The total annual assessment levied against each Unit for Common Expenses, Limited Common Expenses, Service Charges, any special assessment, other sums duly levied against the Unit pursuant to this Declaration, the Bylaws, the Rules and Regulations, or the Act, all interest and late charges, all legal fees and other costs of collection thereof, and all fines, penalties and fees as provided in this Declaration or the Bylaws: (i) shall constitute the personal liability of the Owner of the Unit so assessed; and (ii) shall, until fully paid, constitute a lien against the Unit in favor of the Association as provided in Section 1603-116 of the Condominium Act.

Such lien is prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances recorded before the recordation of this Declaration, (b) a first priority

mortgage recorded before or after the date on which the assessment sought to be enforced becomes delinquent, and (c) statutory liens for real estate taxes and other governmental assessments or charges against the Units; provided, however, that such lien is not subject to the provisions of 14 M.R.S.A. Section 4651 and 18-A M.R.S.A. Section 2-201, *et seq.*, as they or their equivalents may be amended or modified from time to time.

If any assessment is payable in installments, upon a default by such Unit Owner in the timely payment of any two (2) installments in any fiscal year, the maturity of the remaining total of the unpaid installments may be accelerated at the option of the Board of Directors, and the entire balance of the assessment may be declared due and payable in full.

(c) The lien for assessments described in subparagraph (b) may be enforced and foreclosed by the Association in like manner as a mortgage on real estate as provided in the Condominium Act, or by any other means presently or hereafter provided by law or in equity. A suit to recover a money judgment for unpaid assessments, interest, fines, penalties, and costs of collection may be maintained against the Unit Owner personally without foreclosing or waiving the lien securing such assessments, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

(d) Upon a default in the payment of any amount due the Association or a violation of any provision of the Condominium Act, this Declaration, the Bylaws, or the Rules and Regulations of the Association, which violation continues after reasonable notice from the Association to the Unit Owner, then that Unit and its occupants may be excluded from the use and enjoyment of any and all of the Common Elements not essential to access to the Unit, in addition to all other remedies available to the Board of Directors.

**§7.5 Liability.** Multiple owners of a Unit shall each be jointly and severally liable for all Common Expenses, Limited Common Expenses, special assessments, Service Charges, interest, fees, penalties and costs of collection. A grantee shall not be prevented from exercising any right to recover from the grantor such amounts paid for those assessments, common charges, etc. arising prior to the conveyance. A grantee or proposed purchaser for a Unit under a purchase and sale contract may obtain a statement from the Association setting forth the amount of unpaid common charges, assessments and service charges, late fees, interest and costs of collection against the Unit and such other items required by the Condominium Act, upon payment of such fee as may be established from time to time by the Board of Directors. The grantee shall not be liable for, and the Unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement except interest, late fees and costs of collection accruing thereafter.

**§7.6 Budget.** The proposed budget adopted by the Association's Board of Directors shall be adopted unless rejected by a two-thirds (2/3) vote of all Unit Owners.

**§7.7 Working Capital Fund.** The Declarant shall establish a segregated working capital fund for the Association equal to \$1,000 per Unit, to be paid by each Unit purchaser at the initial transfer of title by the Declarant to the purchaser and shall be paid to the Association. Such fund shall be held in a segregated account, owned by and in the name of the Association, established at a Maine financial institution insured by the Federal

Deposit Insurance Corporation or other equivalent federally sponsored insurance. No purchaser shall be entitled to a refund of such monies from the Association upon any subsequent transfer of a Unit.

## **ARTICLE 8 MAINTENANCE AND USE**

**§8.1 General Maintenance Responsibilities.** The Units and Common Elements shall be maintained and repaired by each Unit Owner and the Association in accordance with the provisions of Section 1602-107 (a) of the Condominium Act.

**§8.2 Maintenance of Common Elements.** Generally the Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including but not limited to snowplowing, street lighting and trash pickup (unless provided by the municipality), all as determined by the Board of Directors. If such repair or replacement of the Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, in which case such cost shall be assessed to the Unit Owners responsible as a Service Charge.

**§8.3 Maintenance of Limited Common Elements.** Generally the Association shall maintain, repair and replace the Limited Common Elements, including the Residential Limited Common Elements, all as determined by the Board of Directors. The Association may elect to wash exterior windows and assess the Units therefore as a Service Charge or as a part of the general Common Charges.

The Association may assess Limited Common Expenses applicable to particular Unit(s) to such Unit(s) if the item giving rise to the expense shall be uniquely for the benefit of such Unit(s) only. Without limiting the generality of the foregoing, all expenses associated with maintaining, repairing, replacing, decorating and furnishing the Residential Limited Common Elements shall be borne solely by the Residential Owners. If such repair or replacement of the Limited Common Elements or Residential Limited Common Elements shall be necessitated by the negligence, neglect or misconduct of fewer than all of the Unit Owners, in such instance the cost shall be assessed to the Unit Owners responsible as a Service Charge.

Provided however that each Unit Owner shall maintain the interior and exterior surfaces of door and window glass and remove snow and ice from the steps and deck Limited Common Elements appurtenant to the Unit, but the Association may elect to wash exterior windows and remove such ice and snow and assess the Unit therefore as a Service Charge or as a part of the Common Charges.

**§8.4 Maintenance of Unit/Repair Responsibility.** Each Unit Owner shall keep and maintain her or his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, whether such maintenance and repair shall be structural or nonstructural. Each Unit Owner shall do all redecorating, painting and varnishing which at any time may be necessary to maintain the good appearance and condition

of such Unit. The Unit Owner shall maintain the interior surface of windows in the Unit, including periodic washing. No Unit Owner shall deposit any trash, dirt, debris or other substance from the Unit onto the Common Elements or Limited Common Elements, except in designated trash disposal areas.

The Board of Directors may adopt Rules and Regulations requiring the Unit Owners periodically to replace water heaters and washing machine hoses.

Each Unit Owner shall be responsible for all damage to any other Units or to the Common Elements resulting from his failure or negligence to make any of the repairs required by this Article. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Board of Directors or the managing agent any defect or need for repairs for which the Association is responsible.

To the extent that any damage to a Unit is covered by the Association's insurance, the Unit Owner shall be responsible for (i) payment of the first \$250 of the insurance deductible, if any (or such other amount established by the Rules and Regulations) and for (ii) uninsured damage to any Common Element for which the Unit Owner is otherwise responsible due to the fault or negligence of the Owner.

**§8.5 Liability of Owner.** Each Unit Owner shall be liable, and the Association shall have a lien against his Unit for, all costs of maintaining, repairing or replacing any portion of another Unit or of the Common Elements including Limited Common Elements to the extent that such costs are caused by or attributable to such Unit Owner's act, neglect or carelessness or by that of such Unit Owner's guests, employees, agents, lessees, invitees, or their pets. The Association shall have the right to repair any damage so caused, to cure or correct the cause of the damage and to maintain or replace such damaged Unit or Common Element to the extent the Association deems necessary and appropriate. Such liability shall include any increase in insurance rates occasioned by uses, misuse, occupancy, or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed to modify any waiver by insurance companies of rights or subrogation against such Unit Owner.

**§8.6 Use and Occupancy Restrictions on Residential Units.** Each Residential Unit shall be occupied and used subject to the following restrictions:

(a) *Single Family Residential Use.* No Residential Unit shall be used or occupied for any purpose other than for single family residential purposes, provided, however, that an occupant of a Residential Unit may conduct business activities within the confines of such Residential Unit so long as no signs are displayed, the Residential Unit is not used for meeting with customers or third parties, and there is no noticeable increase in deliveries. Provided however that nothing in this Declaration or the Bylaws shall be construed to prohibit the Declarant from exercising any easements and Special Declarant Rights reserved by the Declarant, including without limitation promotional, marketing or display purposes, sales of Units and for customer service purposes, or from leasing Units owned by Declarant as provided in this Declaration.

(b) *Insurance.* No activities shall be carried on or materials used or kept in any Residential Unit or the Residential Common Elements that will increase the rate of insurance for



the Property, or any part thereof, without the prior written consent of the Board of Directors. No Residential Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the property, or any part thereof, or which would be in violation of any law, regulation or administrative ruling. No waste may be committed on or to the Common Elements.

(c) *Nuisance/ Hazard.* No Unit shall be used so as to create a nuisance or an unreasonable interference with the peaceful possession or proper use of any other Unit or the Common Elements.

No owner or occupant of any Unit shall carry on, or permit to be carried on, any practice which unreasonably interferes with the quiet enjoyment and proper use of another Unit or the Common Elements by the Owner or occupant of any other Unit, or which creates or results in a hazard on the Property.

(d) *Pets and Animals.* Except for household pets permitted below, the maintenance, keeping, boarding and/ or raising of animals, including without limitation, laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited within any Residential Unit or upon the Common Elements. A Residential Unit Owner may keep within such Unit up to one dog, two cats and a reasonable number of other ordinary household pets in a Residential Unit subject to the Rules and Regulations as established from time to time by the Board of Directors. In any event all pets and animals shall be restrained so as not to become noisome, bothersome or offensive to other persons, as determined by the Board of Directors. No dogs, cats or other pets shall be permitted outside of a Unit except on a leash attended by a responsible person. Pet owners shall promptly clean up the droppings left by their pets.

The Association shall have the power to further regulate the keeping of pets and animals under the Bylaws or Rules and Regulations of the Association as promulgated or amended from time to time. Upon notice and opportunity to be heard, the Board of Directors may expel any offending pets and animals from the Property.

(e) *Fire Safety and Noise Control.* No person shall impair nor remove any acoustical, sound deadening, or fire-resistant material from the walls, floors or ceilings of a Unit without replacing the same with materials of equal or greater such qualities.

Only propane may be used in a fireplace or heating stove, and no wood, coal or other solid fuel may be burned therein.

(f) *Trash.* Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed in Rules and Regulations established by the Board of Directors. No articles of personal property belonging to any Residential Unit Owner shall be stored in any portion of the Common Elements.

(g) *Electrical.* No Unit Owner shall overload the electrical wiring in the Condominium. No Unit Owner shall operate any machines, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board of Directors, as appropriate, an unreasonable disturbance or make any alterations, repairs or modifications to

or connection with the electrical or plumbing systems without the prior written consent of the Board of Directors, as appropriate.

Additional major appliances may not be installed in a Unit without the prior written consent of the Board of Directors.

(h) *Governmental Requirements.* All Unit Owners, their families, guests and invitees shall comply with and conform to all applicable laws and regulations of the State of Maine, and all ordinances, rules and regulations of the City of Portland. The violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

**§8.7 Use and Occupancy Restrictions on Commercial Unit.** The Commercial Unit shall be occupied and used subject to the following restrictions:

(a) *Commercial Use.* The Commercial Unit may be used for commercial purposes, consistent with applicable zoning and code requirements imposed by the City of Portland. Notwithstanding the foregoing, the Commercial Unit shall not be used as a restaurant, bar, nightclub or other business which serves food and/or beverage. Furthermore, the Commercial Unit shall be open for normal business hours consistent with other businesses located within the general area of the Condominium.

(b) *Nuisance/ Hazard.* The Commercial Unit shall not be used or operated so as to create a nuisance or an unreasonable interference with the peaceful possession or proper use of any Residential Unit or the Common Elements.

The Commercial Unit owner shall not carry on, or permit to be carried on, any practice which unreasonably interferes with the quiet enjoyment and proper use of the Residential Units, or which creates or results in a hazard on the Property.

(c) *Fire Safety and Noise Control.* The Commercial Unit Owner shall not impair nor remove any acoustical, sound deadening, or fire-resistant material from the walls, floors or ceilings of a Unit without replacing the same with materials of equal or greater such qualities.

(d) *Trash.* Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed in Rules and Regulations established by the Board of Directors. No articles of personal property belonging to any Residential Unit Owner shall be stored in any portion of the Common Elements.

(e) *Governmental Requirements.* All Commercial Unit Owners, their employees, guests and invitees shall comply with and conform to all applicable laws and regulations of the State of Maine, and all ordinances, rules and regulations of the City of Portland. A violating Commercial Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

**§8.8 Use of Common Elements.** Subject to this Declaration, the Bylaws or by the Rules and Regulations adopted from time to time by the Board of Directors pursuant to its

powers, each Unit Owner, occupant, tenant, guest, visitor and invitee may use the Common Elements in common with all other Unit Owners and their occupants, tenants, guests, visitors and invitees, in accordance with the single family residential purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Unit Owners, upon the following terms:

*Signs.* No signs of any character shall be erected, posted or displayed from any Residential Unit, Common Element or Limited Common Element without the prior written approval of the Board of Directors, except for such signs as may be posted by the Declarant for the promotional or marketing purposes as permitted herein or as permitted by the Condominium Documents. The Board of Directors shall have sole authority to erect the exterior sign or signs authorized by the City of Portland. The Board of Directors may also erect or authorize directional and identifying sign(s) listing the name and location of each occupant of the Units.

**§8.9 Leasing.** The Bylaws may restrict and regulate leasing of Residential Units. The Bylaws may not impose restrictions on the use of the Commercial Unit in excess of the requirements of this Declaration.

The Declarant shall have the right to operate any Units (even if not then created as Units) owned by the Declarant as a rental property, and may establish and maintain offices, signs and other accouterments normally used in the operation of rental properties in the Declarant's discretion. Such rental operations shall be for the benefit of the Declarant; neither the Association nor any Unit Owner shall have any interest or right in the profits and losses from such operations.

## **ARTICLE 9 EASEMENTS**

**§9.1 Utilities, Pipes and Conduits.** Each Owner shall have an easement, in common with all other Unit Owners, to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Easements serving his/her Unit and located in any of the other Units. Each Unit shall be subject to an easement in favor of other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have the right to grant to third parties additional permits, licenses and easements over and through the Common Elements for utilities, ways, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Condominium.

**§9.2 Access.** Subject to the terms of this Declaration, the Bylaws and the Rules and Regulations, each Unit Owner shall have an easement in common with all other Unit Owners to use the Common Elements as a means of access to and from his Unit.

**§9.3 Association and Board of Directors Access.** The Association and its officers and directors and such persons as may be authorized by the Board of Directors shall have the right of access to each Unit, as provided in Section 1603-107(a) of the Condominium Act for the inspection, maintenance, repair or replacement of the Common Elements and

Limited Common Elements located in the Unit or accessible from the Unit or for making any addition or improvements thereto; or to make repairs to any Unit, the Common Elements or the Limited Common Elements if such repairs are reasonably necessary for public safety or to prevent damage to any other Unit, the Common Elements or the Limited Common Elements; or to abate any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate whether or not the Residential Unit Owner is present at the time. Upon request of the Association, each Residential Unit Owner shall provide the Association with a copy of each key to the Unit.

**§9.4 Encroachments.** Each Unit and the Common Elements are subject to an easement for structural and lateral support in favor of every other Unit. If any portion of the Common Elements or Limited Common Elements hereafter encroach upon any Unit, or if any Unit hereafter encroaches upon any other Unit or upon any portion of the Common Elements or Limited Common Elements, as a result of settling or shifting of any building in which they are located, other than as a result of the willful or negligent act or omission of the owner of the encroaching Unit or of the Association in the case of encroachments by the Common Elements or Limited Common Elements, then a valid easement for the encroachment and for the maintenance of the same shall exist. In the event that a building is partially destroyed as a result of fire or other casualty or as a result of a taking by eminent domain or by deed in lieu of condemnation and is subsequently rebuilt, encroachments due to such rebuilding shall be permitted, and valid easements appurtenant thereto shall exist.

**§9.5 Ancillary Easements through Common Elements.** The Common Elements (including, but not limited to, the Limited Common Elements) adjacent to a Unit are subject to the following easements in favor of the adjacent Unit:

(i) For the installation, repair, maintenance, use, removal and/ or replacement of pipes, ducts, heating and air conditioning systems, electrical, cable television, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

(ii) For the installation, repair, maintenance, use, removal and/ or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Elements adjacent to such Unit; provided that the installation, repair maintenance, use, removal or replacement of any part of the Common Elements, adversely affect either the thermal, fire safety or acoustical character of the building or impair or structurally weaken the building.

(iii) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the studs which support the sheet rock or plaster perimeter walls bounding the Unit, the bottom surface of joists above the Unit and the top surface of the floor joists below the floor of a Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably

interfere with the common use of any part of the Common Elements, adversely affect either the thermal, safety, or acoustical character of the buildings or impair or structurally weaken the buildings.

## **ARTICLE 10 RIGHTS OF MORTGAGE LENDERS ON UNITS**

**§10.1 Right to Mortgage.** Each Unit Owner shall have the right to mortgage or encumber his own respective Unit together with its appurtenant Allocated Interests. Except as provided by Section 1603-112 of the Condominium Act, a Unit Owner may not mortgage or encumber the Common Elements in any manner except as a component of the Allocated Interests appurtenant to his/her Unit.

**§10.2 Identification of Mortgagee.** A Unit Owner who mortgages his/her Unit shall notify the Board of Directors in writing of the name and address of his Mortgagee(s).

**§10.3 Mortgage Foreclosure and Dispositions.** Any holder of a first mortgage covering a Unit which obtains title to the Unit pursuant to a foreclosure or other exercise of the remedies provided in the Mortgage or through deed in lieu of foreclosure after written notice of default which deed identifies the circumstances classifying it as such a deed shall take title to the Unit with its appurtenant Allocated Interests, free of any claims for unpaid assessments for Common Expenses, Service Charges, late fees, interest and costs levied against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee, other than the proportionate share of the Common Expenses which become due and payable from and after the date on which the Mortgagee shall acquire title to the Unit through a completed foreclosure or deed in lieu of foreclosure.

In the event the Association adopts any right of first refusal or purchase option arising in the event of the sale or transfer of a Unit, it shall not impair the right of an institutional mortgage lender to foreclose its mortgage, to accept a deed in lieu of foreclosure after written notice of default which deed identifies the circumstances classifying it as such a deed, or to dispose or lease a Unit so acquired.

**§10.4 Eligible Mortgage Holder.** “Eligible Mortgage Holder” means the holder of record of a recorded first Mortgage encumbering a Unit (a “Mortgage”) which has delivered written notice to the Association, by prepaid United States Mail, return receipt requested, or by delivery in hand securing a receipt therefore, stating: (a) the name and address of the holder of the Mortgage, (2) the name and address of the owner of the Unit encumbered by such Mortgage, (3) the identifying number of such Unit, and (4) containing a statement that such Mortgage is a recorded first mortgage. The Secretary or manager of the Association shall maintain such information.

Eligible Mortgage Holders shall have all rights specified in the Condominium Act. Furthermore after the filing of the request by an Eligible Mortgage Holder, the Board shall cause notice to be sent to the Eligible Mortgage Holders (and any insurers or guarantors of such mortgages identified in the request) of anyone or more of the following events affecting the



mortgaged Units), if so requested.

- i. Default in the payment of Common Charges, Assessments, Service Charges, or other amounts due the Association which continues for Sixty (60) days or as required by the Condominium Act;
- ii. Default or violation of the Condominium Documents, or any proceedings by the Association relating thereto;
- iii. The expiration, cancellation or material modification of insurance required to be maintained under the Declaration or Bylaws of the Association;
- iv. A material amendment to the Declaration requiring the consent of Eligible Mortgage Holders;
- v. Termination of the Condominium pursuant to Section 1602-118 of the Condominium Act;
- vi. Change in the Allocated Interests of a Unit, voting rights, a change in Unit boundaries or the subdivision of a Unit;
- vii. The merger or consolidation of the Condominium with another condominium;
- viii. The conveyance or subjection to a security interest of any portion of the Common Elements;
- ix. The lapse, cancellation or material modification of any insurance policy maintained by the Association or any use of any hazard insurance proceeds other than for repair or restoration of the Property; and
- x. Such other events specified in the Condominium Act.

If in said request to the Association forwarded by an Eligible Mortgage Holder the mortgage is identified as being subject to the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans' Administration, the Federal Housing Administration or other recognized institutional mortgage programs, then the Association shall maintain such hazard and other insurance policies and coverage required under said mortgage programs and identified in said notice from the institutional mortgage holder, to the extent such insurance is available to the Association.

**§10.5 Mortgagee Approval Rights.** For a material amendment to the Declaration or any of the actions specified below but subject in any event to the provisions of the Condominium Act, approval must be obtained from Eligible Mortgage Holders representing in the aggregate at least 51% of the votes of Units subject to mortgages held by Eligible Mortgage Holders. An amendment affecting any of the following is considered material:

- i. Voting rights in the Association;

- ii. Change in percentage liability for common expenses, assessment liens for common expenses, priority of assessment liens, or the subordination of assessment liens, or increases in the assessments of more than 25% over the prior year;
- iii. Reduction in reserves for maintenance, repair and replacement of Common Elements;
- iv. Responsibility for maintenance and repairs;
- v. Reallocation of pro rata interests in the Common Elements, the Limited Common Element or rights to their use;
- vi. Alteration of the definitions of the boundaries of any Unit, including the partition or subdivision of a Unit;
- vii. Convertibility of Units into Common Elements or vice versa;
- viii. Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- ix. Hazard insurance or fidelity bond requirements;
- x. Imposition of any restrictions on the leasing of Units;
- xi. Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- xii. A decision by the Association to establish self-management after more than 50 Units have been created when professional management had been required previously by an Eligible Mortgage Holder or by the Condominium Declaration or the Bylaws;
- xiii. Restoration or repair of the Property (after damage or destruction, or partial taking by eminent domain or condemnation) in a manner other than that specified in the Declaration;
- xiv. Any action to terminate the Condominium after substantial damage destruction or condemnation occurs;
- xv. Any provisions of this Article and any other provision of this Declaration expressly benefits mortgage holders, insurers or guarantors; or
- xvi. Any provisions of this Article.

When Unit Owners are considering termination of the Condominium for reasons other than substantial damage, destruction or taking by eminent domain of the Condominium, the Eligible Mortgage Holders representing at least 67% of the votes of Units subject to mortgages held by Eligible Holders must agree.

Approval shall be presumed when an Eligible Mortgage Holder is sent a written request for approval of a proposed amendment by registered or certified mail, return receipt requested, and then fails to submit a response within 30 calendar days after the notice is received.

**§10.6 Mortgagee Priority.** No provision of the Condominium Documents shall be deemed or construed to give a Unit Owner, or any other person, priority over the rights of any Eligible Mortgage Holder under its mortgage in the case of a distribution of insurance proceeds or condemnation awards for losses to or taking of Units, Common Elements, or both.

**§10.7 Records.** An Eligible Mortgage Holder may examine the books, records and accounts of the Association at reasonable times. The Association shall maintain current copies of this Declaration, the Association's articles of incorporation, Bylaws, and other Rules and Regulations concerning the Condominium as well as its own books, records, and financial statements available for inspection by Unit Owners or by any Eligible Mortgage Holder, insurers, and guarantors of first mortgages that are secured by Units available during normal business hours. Upon written request, any Eligible Mortgage Holder may obtain an audited statement of the Association's fiscal affairs prepared by an independent certified public accountant once the Condominium has been established for a full fiscal year, which preparation shall be prepared at the Eligible Mortgage Holder's expense.

## **ARTICLE 11 INSURANCE**

**§11.1 General.** No later than the date of the first conveyance of a Unit to a person other than the Declarant, the Association, shall obtain and maintain as a Common Expense, the policies of insurance described below to the extent such policies shall be reasonably available. If such insurance is not maintained, then the Association shall give written notice thereof to the Unit Owners and the Eligible Mortgage Holders. To the extent that such insurance subsequently becomes unavailable, the Association shall obtain as a substitution the most comparable insurance available. The Board of Directors is hereby irrevocably appointed as attorney-in-fact for each Unit Owner and for each Mortgagee and Eligible Mortgage Holder and for each owner of any other interest in the Property, for purchasing and maintaining the insurance, for the collection and disposition of any insurance, including distribution pursuant to Section 1603-113(c) of the Condominium Act, for the negotiation of losses and execution of releases of liability, and for the execution of all documents, and performance of all other acts necessary to accomplish these purposes.

**§11.2 Property and Casualty Insurance for Units and Common Elements.** The Association shall obtain and maintain in effect an "all-risk" fire and casualty insurance policy covering the Property with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, issued by an insurance company authorized to do business in the State of Maine (which company shall also meet the ratings requirements of the Federal National Mortgage Association), insuring as a single entity the entire Property including the Common Elements, the Limited Common

Elements Units, and the fixtures, supplies and common personal property belonging to the Association, excepting the land, foundations, excavations, and other similar items customarily excluded from property insurance policies and also excepting furniture, furnishings or other personal property supplied or installed by Unit Owners. The policy shall cover the interests of and name as insureds the Association, the Board of Directors, and all Unit Owners and their Mortgagees as their insurable interests may appear.

Such blanket or master insurance policy shall be in an amount equal to 100% of the then current full replacement cost of the insured Property (exclusive of the land, excavations, foundations and other similar items customarily excluded from such coverage), without deduction for depreciation, together with coverage for the payment of common expenses with respect to damaged Units during the period of reconstruction. Such insurance policy may, at the option of the Board of Directors, contain such deductible as the Board of Directors shall reasonably deem appropriate but not to exceed the lesser of \$10,000 or one percent (1%) of the policy's face amount. Unless otherwise established by the Board of Directors from time to time, a Unit Owner shall pay the expense of repair of damage to his/her Unit in the initial deductible amount of \$250 (as such greater amount as may be revised by the Rules and Regulations adopted by the Board of Directors from time to time) not covered by the insurance; the Association shall not be responsible for the costs of repair of damage to the Unit in the amount of the Unit Owner's insurance deductible. Such casualty insurance policy shall also include the following provisions:

- (i) The following endorsements or their equivalent: (a) "no control," meaning that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents, when such act or neglect is not within the control of the insured, or the Unit Owners collectively, nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control; (b) "Construction Code Endorsement" or "increased cost of construction," (c) "agreed amount" or elimination of co-insurance clause; and (d) "inflation guard," when it can be obtained.
- (ii) That any "no other insurance" clause shall expressly exclude individual Unit Owners' policies from its operation, so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees;
- (iii) The recognition of any Insurance Trust Agreement whereby the Board of Directors may designate in writing an Insurance Trustee to hold any insurance proceeds in trust for disbursement, as provided in Section 11.3 below; and
- (iv) A standard "mortgagee clause" which shall: (a) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit, in their respective order and preference, whether or not named therein; (b) provide that such insurance as to the interest of any mortgagee shall not be

invalidated by any act or neglect of the Association or owners or any persons under any of them; and (c) waive any provision invalidating such mortgagee clauses by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the mortgagee pay any premium thereon, and any contribution clause.

**§11.3 Casualty Losses, Adjustment and Payment; Insurance Trustee.** Any loss covered by the insurance policy described in Section 11.2 above shall be adjusted with the Association acting through its Board of Directors, but the insurance proceeds shall be payable to the Insurance Trustee designated for that purpose, if any, as provided in the Condominium Act and otherwise to the Association, and not to any Mortgagee.

The Insurance Trustee or the Association as applicable shall hold any insurance proceeds in trust for Unit Owners, Mortgagees and other lien holders as their interests may appear. The Board of Directors shall cause the Insurance Trustee or the Association to obtain a surety bond in 100% of the amount of the insurance proceeds for the faithful performance of the duties as insurance trustee before it shall be entitled to receive such proceeds. Subject to the provisions of this Article, the Bylaws and Section 1603-113(e) of the Condominium Act, the proceeds shall be disbursed first for the repair or restoration of the damage to the Property. Unit Owners, Mortgagees and other lien holders are not entitled to receive payment of any portion of the proceeds, unless either (i) there is a surplus of proceeds after the damaged Common Elements and Units have been repaired or restored, or (ii) the decision has been made not to repair or restore the damage as provided in Section 1603-113(h) of the Condominium Act, or (iii) the Condominium is terminated in whole or part.

**§11.4 Liability Insurance.** The Board of Directors shall obtain and maintain, as a Common Expense, comprehensive general public liability insurance (including medical payments insurance) and property damage insurance in such limits as the Board may from time to time determine, insuring each Board of Directors member, the managing agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owners (and their invitees, agents and employees) covering all occurrences commonly insured against for death, bodily injury or property damage, arising out of the maintenance, ownership or use of the Common Elements, and for any legal liability resulting from suits or actions related to employment contracts to which the Association is a party. Such insurance shall be issued on a comprehensive liability basis and shall contain: (a) a cross liability endorsement, under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (b) hired and non-owned vehicle coverage; (c) a "severability of interest" endorsement, which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner; and (d) a broad form liability extension endorsement including "personal injury," contractual liability, and other coverage commonly included in such broad form endorsement. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence.

**§11.5 Additional Required Provisions.** All insurance policies required to be carried

by the Association under this Article shall in addition contain the following provisions or features:

- i. The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the managing agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;
- ii. The Declarant, so long as the Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner;
- iii. Each Unit Owner is an insured person under the policy with respect to liability arising out of the ownership of an undivided interest in the Common Elements or membership in the Association;
- iv. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household;
- v. No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- vi. If at the time of a loss under the Association's policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

**§11.6 Other Insurance.** The Board of Directors shall obtain and maintain as a Common Expense:

- i. To the extent reasonably available, "directors and officers" liability insurance, to satisfy the indemnification obligations of the Association;
- ii. Workers' compensation insurance, if and to the extent necessary to meet the requirements of law;
- iii. Flood insurance if any or all of the Property is located in a special flood hazard area equal to the greater of 100% of the insurable value of the Property or the maximum coverage available under the appropriate national Flood Insurance Administration program. A blanket or master policy shall be obtained which includes a maximum deductible of the lesser of \$5,000 or one percent (1.00%) of the policy face amount; and
- iv. Such other insurance as the Board of Directors may determine, as may be requested by a majority of the Unit Owners, or as may be required by Federal National Mortgage Association Guidelines (including, without limitation, fidelity bond coverage).

**§11.7 Memoranda and Cancellation.** All insurers that shall issue an insurance policy or policies under this Article shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or Mortgagee.



All such insurers issuing the policy may not cancel (including cancellation for non-payment of premium), substantially modify, or refuse to renew such policy or policies until twenty (20) days after notice of the proposed cancellation of non-renewal has been mailed to the Association, the managing agent, each Unit Owner and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**§11.8 Separate Insurance.** Each Unit Owner shall have the right, at his own expense, to obtain insurance for his Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his Unit under coverage normally called "improvements and betterments coverage;" provided, however, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage which would decrease the amount which the Association on behalf of all Unit Owners may realize under any insurance policy maintained by the Association, or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by a Unit Owner. All such Unit Owner's policies shall contain waivers of subrogation.

At the request of the Association any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his expense, and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Unit Owner shall also promptly notify the Board of Directors in writing in the event such policy is canceled. Each Unit Owner shall notify the Board of Directors in writing of all structural improvements made by the Unit Owner to his Unit; provided, however, that this sentence shall not be construed as an authorization to Unit Owners to make structural improvements to Units otherwise than in accordance with this Declaration, the Bylaws and Rules and Regulations promulgated by the Board of Directors. Any premium increase caused by such improvements may be assessed to the Owner of the improved Unit. No Unit Owner shall be entitled to receive insurance proceeds for the repair, restoration or rebuilding of any such improvements not so reported to the Board of Directors, unless otherwise consented to by vote of the Board of Directors.

Notwithstanding any other provision of this Declaration, during the period a building or other associated improvements are under construction prior to the creation of Units therein, the Declarant shall be responsible for procuring casualty insurance on the building and the proceeds of such insurance shall be the exclusive property of the Declarant and its mortgagee.

## **ARTICLE 12 DAMAGE OR DESTRUCTION.**

**§12.1 Repair.** Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association unless:

- i. the Condominium is terminated;

- ii. repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- iii. one hundred percent (100%) in interest of the Unit Owners vote not to rebuild, including every owner of a Unit or limited common area which would not be rebuilt, and including the consent of the Eligible Mortgage Holders as required herein.

The cost of repair or replacement in excess of insurance proceeds and reserves or not covered by any deductible shall be a Common Expense, provided that Unit Owners shall be responsible for \$250 of the insurance deductible for damage to their individual Units or such greater portion of the deductible established by the Rules and Regulations adopted from time to time by the Board of Directors.

**§12.2 Application of Insurance Proceeds.** If the entire Property is not completely repaired or replaced:

- i. the insurance proceeds attributable to the damaged Units and Common Elements shall be used to restore the damaged areas to a condition compatible with the remainder of the Condominium;
- ii. the insurance proceeds attributable to Units which are not rebuilt, including without limitation the interest in the Common Elements and in Limited Common Element, shall be distributed to such Unit Owners and their mortgagees; and
- iii. the remainder of the proceeds shall be held in trust to be distributed to the Unit Owners and their mortgagees in accordance with the Condominium Act.

Any loss covered by such insurance shall be adjusted with the Association, which shall exclusively represent all Unit Owners in any proceedings, negotiations, settlements or agreements. The insurance proceeds shall be paid to the Association as trustee for the Unit Owners and lien holders as their interests may appear. Mortgagees' liens shall transfer in order of priority to the insurance proceeds. Notwithstanding the provisions of this Section, Article 13 of the Declaration governs the distribution of insurance proceeds if the Condominium is terminated. If the members vote not to rebuild any Unit, that Unit's percentage interest in the Common Elements shall be automatically reallocated to the then remaining Units in proportion to their percentage interests prior to the reallocation, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. Unless a Unit Owner has requested and received written confirmation from both the Association and the Association's hazard insurance carrier of optional insurance coverage for the owner's permanent improvements and betterments within the Unit, the Unit Owner shall be responsible for the expense of repair or replacement.

Notwithstanding any other provision of this Declaration, during the period a building is under construction prior to its creation as a Unit and the time the Unit commences paying common charges, the Declarant shall be responsible for procuring casualty insurance on the building and the proceeds of such insurance shall be the exclusive property of the Declarant and its mortgagee.

## **ARTICLE 13 TERMINATION OF CONDOMINIUM**

**§13.1 Termination.** In accordance with Condominium Act, the Condominium may be terminated in whole or part with the agreement of the Owners of Units to which at least eighty per cent (80%) of the Votes in the Association are allocated, and that percentage of Eligible Mortgage Holders required herein and the Condominium Act. Termination shall not bar the subsequent resubmission of the Property to the Condominium Act.

**§13.2 Effect of Termination.** Upon removal of the Property from the Condominium Act, the Unit Owners shall hold the Property and any proceeds thereof as tenants in common in accordance with the Condominium Act and subject to the Condominium Act with any mortgages or liens affecting a Unit to attach in order of priority against the resulting interest.

## **ARTICLE 14 EMINENT DOMAIN**

**§14.1 Acquisition of Unit(s).** If a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and his mortgagee(s), if any, for the Unit and its percentage interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition of the Unit, its Allocated Interests shall be automatically reallocated to the remaining Units in proportion to their respective Allocated Interests before the taking, and the Association shall promptly prepare, execute, and record an instrument reflecting the reallocations.

If part of a Unit is acquired by eminent domain, to the extent the award is paid to the Association or is controlled by this Declaration or the Association, the award shall be applied to compensate the Unit Owner and the mortgagee(s), if any, for the reduction in value of the Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. Upon such acquisition, (i) that Unit's Allocated Interests shall be reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interest divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests provided however, that each Unit shall continue to have one vote to permit equality among Units.

**§14.2 Acquisition of Common Elements.** If part of the Common Elements are acquired by eminent domain, the Association shall be entitled to payment of the award, subject, however, to the Condominium Act; generally the portion of the award attributable to the Common Elements taken shall be distributed to the Unit Owners and their mortgagee(s) in accordance with the Condominium Act, unless the Association rebuilds or acquires comparable elements. Any portion of an award attributable to the acquisition of a Limited Common Elements or as may otherwise benefit the Condominium as determined

by a Court of competent jurisdiction must be equally divided among the owners of the Units to which that Limited Common Element was allocated at the time of acquisition in proportion to their interests in the Common Elements.

**§14.3 Rights of the Association and Mortgage Holders.** In the event of a proposed acquisition by eminent domain, the Association shall have the right but not the obligation to act and to intervene on behalf of Unit Owners. Nothing contained in this Declaration, the Bylaws or any rule or regulation adopted by the Association, however, shall entitle any Unit Owner or other person to priority over a first mortgagee of a Unit pursuant to its mortgage instrument in the right to receive eminent domain awards for the taking of Units and/or Common Elements.

## **ARTICLE 15 AMENDMENTS**

**§15.1 General.** Certain amendments to this Declaration may be made unilaterally by the Declarant in accordance with this Declaration and the Condominium Act. In addition, certain amendments may be unilaterally executed and recorded by the Association as described in Condominium Act Sections 1601-107, Eminent Domain, 1602-108(c), Allocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113, Subdivision of Units and 1602-117(a), Amendment of Declaration, and certain amendments to this Declaration may be made by certain Unit Owners in Sections 1602-108(b), Reallocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113(b), Subdivision of Units, or 1602-118(b), Termination of Condominium.

Otherwise subject to the other provisions of this Declaration and of the Condominium Act, the Declaration and the accompanying Plats and the Plans may be amended as follows:

- (a) *Before Any Conveyance.* Prior to the conveyance of any Unit by the Declarant to a third party purchaser (other than as security for an obligation), the Declarant shall have the right to unilaterally amend and re-amend this Declaration in any manner that the Declarant may deem appropriate.
- (b) *After First Conveyance.* After the first conveyance of Unit by a Declarant to a third party purchaser, the terms of the following procedures shall apply to an amendment of this Declaration:
  - i. *Development and Special Declarant Rights.* Notwithstanding any other provision of this Declaration, the Declarant acting unilaterally may record amendments to this Declaration which result from the exercise of Development and Special Declarant Rights pursuant to this Declaration and/or the Act.
  - ii. *Proposal and Notice.* An amendment to the Declaration may be proposed by either the Board of Directors or by Unit Owners holding at least 20% of the votes in the Association. Notice of the subject matter of a proposed amendment, including

the proposed text thereof, shall be included in the notice of any meeting in which a proposed amendment is to be considered, and such notice shall be given to all Unit Owners and all eligible Mortgage Holders.

- iii. *Approval.* The amendment shall be adopted if it receives the affirmative vote or written consent of 67% or more of the total percentage in interest of all votes in the Association in all cases and such Eligible Mortgage Holders as may be required herein. Unit Owners and mortgagees may express their approval in writing or by proxy. Provided however that no amendment may change the uses to which a Unit may be put without the unanimous consent of the owners of Units affected. Except as specifically provided to the contrary in this Declaration or the Act, no amendment may alter the boundaries of a Unit or the Allocated Interests allocated to a Unit without the unanimous consent of all affected owners.
- iv. *By Written Agreement.* In the alternative, an amendment may be made by an agreement signed by the record Owners of Units to which are allocated 100% of the Units in the manner required for the execution of a deed and acknowledged by at least one of them, together with any required approval by Eligible Mortgage Holders, and such amendment shall be effective when certified and recorded as provided below.

**§15.2 Proviso; Consent of Declarant.** No amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers and options of the Declarant, its successors or assigns, unless the Declarant shall approve such amendment.

**§15.3 Notice, Execution and Recording.** After each amendment to this Declaration adopted by the Association pursuant to this Article has been recorded, notice thereof shall be sent to all Unit Owners and to all Eligible Mortgage Holders, but failure to send such notices shall not affect the validity of such amendment. A certificate of each such amendment shall be executed and acknowledged by such officer(s) or director(s) of the Association designated for that purpose by the Bylaws. The amendment shall be effective when such certificate and copy of the Amendment are recorded.

**§15.4 Commercial Unit Owners' Consent.** Notwithstanding any contrary or inconsistent provision in this Declaration, no amendment to this Declaration which materially and adversely affects the rights or obligations of Nonresidential Unit Owners shall be effective unless consented to by the Commercial Unit Owner.

**§15.5 Notice and Challenge.** No action to challenge the validity of an amendment to this Declaration adopted by the Association may be brought more than one (1) year after such amendment is recorded.

## ARTICLE 16

## GENERAL PROVISIONS

**§16.1 Enforcement.** The failure to comply with the terms of this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto shall entitle the Association to (a) take court action, including without limitation suit for injunctive relief, and/ or (b) take such further action as permitted under the Bylaws, and/ or (c) enter the Unit or Common Elements in which such violation or breach exists and summarily to abate and cure the violation at the expense of the defaulting Unit Owner, and the Board of Directors shall not be deemed guilty in any manner of trespass when enforcing these terms. The exercise of anyone remedy shall not preclude the exercise of other remedies provided by law, the Condominium Act, this Declaration or in the Bylaws. In any such enforcement action or proceeding the Association shall be entitled to recover the costs of the proceeding, including reasonable attorneys' fees and costs, with interest.

The failure of the Board of Directors to enforce any covenant, restriction or other provision of the Condominium Act, the Bylaws or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

**§16.2 Units Not Yet Separately Assessed.** In the event that for any year real estate taxes are not separately taxed and assessed to each separate Unit Owner but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective Common Expense Liabilities.

**§16.3 Conflict.** If any provision of this Declaration, the Bylaws or the Rules and Regulations conflicts with any applicable laws, including, but not limited to, the Condominium Act, then the laws shall be deemed controlling; but the validity of the remainder of this Declaration, the Bylaws and Rules and Regulations, and the application of any such provision, section, clause, phrase, or word in other circumstances shall not be affected thereby.

**§16.4 Severability.** The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

**§16.5 Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

**§16.6 Captions.** The headings in this Declaration are for purposes of reference only, and shall not limit or otherwise affect the meaning hereof. The table of contents is attached to this Declaration for purposes of reference and convenience only, and shall neither limit nor otherwise affect the meaning of this Declaration. References in this Declaration to Articles, and Schedules without references to the document in which they are contained are references to this Declaration. Schedules are attached to and incorporated by reference into this Declaration.

**§16.7 Gender, Number, Etc.** The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

**§16.8 Power to Interpret.** Any dispute or disagreement with any person other than the Declarant with respect to interpretation or application of this Declaration or the Bylaws or the Rules and Regulations shall be determined by the Board of Directors, which determination shall be final and binding on all parties.

**§16.9 Disputes with Declarant and Arbitration.** In any dispute between one or more Unit Owners and the Declarant regarding the Common Elements, the Board of Directors shall act for the Unit Owners, and any agreement with respect thereto by the Board of Directors shall be conclusive and binding upon the Unit Owners.

All claims, disputes and other matters in question between the Declarant, on the one hand, and the Association or any Unit Owner(s), on the other hand, arising out of or relating to a Unit, the Common Elements, the Limited Common Elements, this Declaration, the Bylaws, the Rules and Regulations, or the deed to any Unit or the breach thereof, or the course of dealing between any Unit Owner, the Association and the Declarant, except for claims which have been waived by the acceptance of a deed, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise in writing. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance applicable law in any court having jurisdiction thereof.

## **ARTICLE 17 NOTICES**

### **§17.1 Notices.**

(a) *To Unit Owners.* All notices, demands, bills and statements or other communications affecting the Condominium shall be given to Unit Owners by the Association in writing and shall be delivered in hand, delivered to the Unit, or sent by United States mail, postage prepaid. If such notification is of a default or lien, then it shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Unit Owner at the address which the Unit Owner shall designate in writing and file with the Secretary of the Association, or if no such address is so designated, the address of the Unit of such Unit Owner who is the record owner thereof.

(b) *Notice to the Association.* All notices, demands, statements or other communications affecting the Condominium given by the Unit Owners to the Association shall be in writing, and shall be deemed to be delivered personally, securing a written receipt therefore, or sent by United States mail, postage prepaid, return receipt requested, addressed to the Association at the principal office of the managing agent, if any, and to the secretary of the Association at the Secretary's address.



(c) *Notice to Eligible Mortgage Holder.* All notices, demands, statements or other communications affecting the Condominium given by the Association to any Eligible Mortgage Holder shall be in writing and shall be delivered personally, securing a written receipt, or sent by United States mail, postage prepaid, addressed to the Eligible Mortgage Holder at the address identified pursuant to the notice given to the Association when it became an Eligible Mortgage Holder.

WITNESS its hand and seal as of \_\_\_\_\_, 2015.

**BATEMAN PARTNERS, LLC**

\_\_\_\_\_

Witness

By: \_\_\_\_\_

Name:

Its:

STATE OF MAINE  
CUMBERLAND, ss

\_\_\_\_\_, 2015

Personally appeared the above-named \_\_\_\_\_ in his/her said capacity and acknowledged the foregoing Declaration to be his/her free act and deed, and the free act and deed of said limited liability company, before me,

Name: \_\_\_\_\_  
Attorney at Law/Notary Public

- Exhibit A    Legal Description of Land
- Exhibit B    Condominium Plat
- Exhibit C    Condominium Floor Plans
- Exhibit D    Allocated Interests
- Exhibit E    Condominium Association Bylaws

DRAFT

## 2. Right, Title and Interest

### 2.1 OVERVIEW

The current owner of the property is East India Land Company, LLC. The applicant has a Purchase Option Agreement for the property, a copy of which is attached as Attachment C.

### 2.2 PARKING

The proposed project is required to have 20 parking spaces per ordinance requirements, as summarized in the following table:

<b>USE</b>	<b>RATE</b>	<b>REQUIRED # OF SPACES</b>
4,427 S.F. Retail	1 space per 200 S.F. of floor area in excess of 2,000 S.F. not used for bulk storage.	12 Spaces
8 Residential Units	1 space per unit	8 Spaces
<b>Total</b>		<b>20 Spaces</b>

The applicant has an agreement to lease parking for the project at the adjacent Ocean Gateway Garage and intends to provide 44 spaces through this agreement. A copy of the Lease Agreement is provided as Attachment D.

### 2.3 ATTACHMENTS

Attachment C – Purchase Option Agreement  
Attachment D – Lease Parking Agreement

**ATTACHMENT C**

**Purchase Option Agreement**

MEMORANDUM OF PURCHASE OPTION AGREEMENT  
(25 India Street, Portland, Maine)

MEMORANDUM OF PURCHASE OPTION AGREEMENT made this \_\_\_\_\_ day of March, 2014 with respect to the following described Purchase Option Agreement:

- SELLER: EAST INDIA LAND COMPANY LLC, a Maine limited liability company with a place of business in Portland, Maine.
- PURCHASER: BATEMAN PARTNERS, LLC, a Maine limited liability company with a mailing address of P.O. Box 3572, Portland, ME 04104-357.
- PREMISES: Land, any buildings or improvements, appurtenant rights (including parking rights) and easements, located at 25 India Street, Portland, Maine, all as described in the deed from 25 India Street LLC to Seller dated May 1, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30624, Page 17 (the "Premises"), a copy of which is attached as Schedule A.
- TERM: The purchase option shall be elected by Purchaser, if at all, on or before September 2, 2014.
- RIGHT OF EXTENSION: None, without Seller's written consent.

This Memorandum is intended to provide notice of the Purchase Option Agreement and shall not modify or amend any of the terms of the Purchase Option Agreement. In the event of any conflict between this Memorandum and the Purchase Option Agreement, the terms of the Purchase Option Agreement shall control.

Signature Page Follows.

IN WITNESS WHEREOF, the Seller and Purchaser have caused this Memorandum of Purchase Option Agreement to be executed by their duly authorized representatives as of the day and year set forth above.

Witness:

Dave K. Linden

EAST INDIA LAND COMPANY LLC

By:

Fred M. Forsley

Fred M. Forsley

Its: Manager

Seller

BATEMAN PARTNERS, LLC

Alex Meyer

By:

Nathan Bateman

Nathan Bateman

Its: Manager

Purchaser

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

March 7, 2014

Then personally appeared the above-named Fred M. Forsley, Manager of East India Land Company LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said East India Land Company LLC.

Before me,

Brandon J. Mazer  
Notary Public / Attorney At Law

Brandon J. Mazer  
Print name

My Commission expires: \_\_\_\_\_

SCHEDULE A

2

Doc#: 25741 Bk:30624 Pg: 17

QUITCLAIM DEED WITH COVENANT

25 INDIA STREET LLC, a Maine limited liability company ("Grantor") having an address of 2 Market Street, Suite 500, Portland, ME 04101, FOR CONSIDERATION PAID, grants to EAST INDIA LAND COMPANY LLC, a Maine limited liability company with a mailing address c/o Shipyard Brewing Company, 86 Newbury Street, Portland, ME 04101 (the "Grantee"), with QUITCLAIM COVENANT, certain real property, together with any improvements thereon (the "Premises"), located at India Street and Fore Street in Portland, Cumberland County, Maine, and shown as "Proposed Lot 4" on plan entitled "Subdivision/Recording Plat on India Street and Fore Street, Portland, Maine, made for Riverwalk, LLC, 25 India Street LLC, Hancock & Middle LLC and Ocean Gateway Garage LLC by Owen Haskell, Inc., dated March 22, 2006, as last revised April 13, 2006" (the "Plan") and recorded in Cumberland County Registry of Deeds in Plan Book 207, Page 54.

MAINE REAL ESTATE TAX PAID

TOGETHER WITH the perpetual easement, in common with Ocean Gateway Garage LLC, its successors and assigns, for maintenance purposes and use by delivery service vehicles to and from the Premises to Fore Street over and across a strip of land approximately eleven feet in width running along the entire easterly sideline of the Premises ("Alley Easement Area") which Alley Easement Area is also shown as an "11' Easement Benefits 25 India LLC" on the Plan. Together with the perpetual rights and easements to (a) maintain and plow the Alley Easement Area; (b) temporarily park service or delivery vehicles, lay, maintain, repair and replace utility lines, including without limitation, gas, electricity, sewer, water, storm, drainage in, on and over the Alley Easement Area; and, provided that any such acts shall be performed at Grantee's sole cost and expense in such a manner as to reasonably minimize any interference with Ocean Gateway Garage LLC, or its successors and assigns, use and enjoyment of the Alley Easement Area and subject to such rules and regulations as Ocean Gateway Garage LLC may promulgate from time to time. All of the foregoing described rights and easements together shall be herein referred to collectively as the "Alley Easement."

TOGETHER WITH the right to construct, operate and maintain two above ground pedestrian ramps to the Gateway Garage from any building constructed on the Premises together with such further ancillary rights, as are described in, and all of which to be in accordance with and subject to that certain Abutters Agreement between Ocean Gateway Garage LLC and the Grantee of even date to be recorded herewith and incorporated by reference as if more fully set forth herein. The pedestrian ramps referenced above are referred to in the Abutters Agreement and hereinafter as the "Pedestrian Ramps".

Subject to all of the terms, conditions and requirements set forth in the above-referenced Abutters Agreement, the Premises are conveyed together with the right to install subsurface foundation footings and/or pilings along the southwesterly edge of the Alley Easement Area provided (i) such installation does not interfere with any existing utility lines in the Alley Easement Area; (ii) that the footings do not encroach more than 24" onto the Alley Easement Area; and (iii) that the footings are all beneath the surface of the Alley Easement Area.

The Premises are conveyed SUBJECT TO (a) all rights, easements and privileges reserved for the benefit of the adjacent property of Ocean Gateway Garage LLC appearing of record including, without limitation, all those certain rights, easements and privileges reserved for the benefit of Ocean Gateway Garage LLC in that certain Quitclaim Deed With Covenant from Ocean Gateway Garage LLC to the Grantor dated May 27, 2005 and recorded in said Registry of Deeds in Book 25165, Page 250; (b) the right of Ocean Gateway Garage LLC, its successors and assigns, to convey in the future similar rights to others including lessees of Ocean Gateway Garage LLC and in the event that Ocean Gateway Garage LLC's remaining land is converted to a condominium, unit owners or an association of owners, without the necessity of receiving the prior consent of the Grantee, or its successors or assigns; (c) all permitting conditions imposed on Ocean Gateway Garage LLC, its successors and assigns, as such conditions may be amended from time to time; (d) the right to maintain the existing transformer, generator, utility lines, and any replacements thereof; and (e) the right to maintain and utilize any existing encroachments benefiting or serving the adjacent property of Ocean Gateway Garage LLC.

Grantee covenants and agrees by acceptance hereof that the Alley Easement Area shall be kept free of all structures, debris, and materials and that the Alley Easement Area shall be used for temporary parking of delivery, service, maintenance and construction vehicles only and not for parking of any other vehicles.

Grantee further covenants and agrees that in the event Ocean Gateway Garage LLC has paved or will pave the Alley Easement Area, upon completion of any construction on Premises, Grantee will restore the pavement in the Alley Easement Area if damage to pavement warrants such restoration. All other maintenance costs associated with the Alley Easement Area shall be shared equally between Ocean Gateway Garage LLC and Grantee, and their respective successors and assigns.

Grantee further covenants and agrees by acceptance hereof that it hereby succeeds to, and shall indemnify the Grantor against, the Grantor's obligation to indemnify Ocean Gateway Garage LLC, its successors and assigns, for any and all lost profits, costs, expenses and damages arising from the Grantor's and/or the Grantee's agent's or contractor's use of the Alley Easement Area.

Except as expressly stated herein, Grantee agrees to accept the Premises "as is," "where is" and "with all faults."

Grantee, by its acceptance of this instrument, hereby agrees for itself and its successors and assigns that any development and improvements constructed at the Premises shall have the benefit of and be subject to and in accordance with all of the terms and provisions of that certain Abutters Agreement between the Grantee and Ocean Gateway Garage LLC of even date to be recorded herewith.

Meaning and intending to convey the same premises as those described in a Quitclaim Deed from Ocean Gateway Garage LLC to 25 India Street LLC dated May 25, 2007, and recorded in the Cumberland County Registry of Deeds in Book 25165, Page 250.




IN WITNESS WHEREOF, 25 INDIA STREET LLC has caused this instrument to be executed by Riverwalk Venture, LLC, its Manager, through Intercontinental Fund IV Ocean Gateway, LLC, Intercontinental Real Estate Investment Fund IV and Intercontinental Real Estate Corporation, its parent companies, and by Peter Palandjian, as President and Treasurer of Intercontinental Real Estate Corporation, hereunto duly authorized, this 1st day of May, 2013.

25 INDIA STREET LLC, a Maine limited liability company  
By: RIVERWALK VENTURE, LLC, a Maine limited liability company, Its Manager

By: Intercontinental Fund IV Ocean Gateway, LLC, Its Manager

By: Intercontinental Real Estate Investment Fund IV, LLC, Its Manager

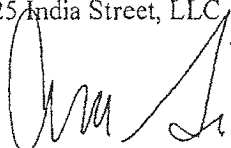
By: Intercontinental Real Estate Corporation Its Manager

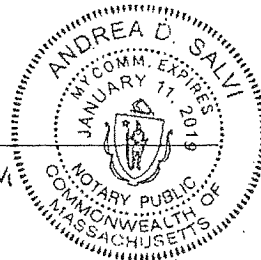
By:   
Peter Palandjian  
Its President and Treasurer

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 7th day of May, 2013, before me, the undersigned notary public, personally appeared Peter Palandjian, President and Treasurer of Intercontinental Real Estate Corporation, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the foregoing instrument, and acknowledged to me that he signed it voluntarily for its stated purpose and as the free act and deed of said Intercontinental Real Estate Corporation and in its stated capacities for each of Intercontinental Real Estate Investment Fund IV, LLC, Intercontinental Fund IV Ocean Gateway, LLC, Riverwalk Venture LLC, Riverwalk, LLC and 25 India Street, LLC.

  
Notary Public Andrea Salvi



The Joinder of Ocean Gateway Garage LLC to this Deed is on the following page.

**ATTACHMENT D**

**Lease Parking Agreement**

PARKING LEASE  
(25 India Street Parking)

THIS PARKING LEASE (the "Parking Lease") is entered into as of the 1st day of May, 2013, by and between OCEAN GATEWAY GARAGE LLC, a Maine limited liability company with an address of c/o Paul J. Nasser, CFO/COO, Intercontinental Real Estate Corp., 1270 Soldiers Field Road, Boston, MA 01235 ("Owner") and EAST INDIA LAND COMPANY LLC, a Maine limited liability company with a mailing address c/o Shipyard Brewing Company, 86 Newbury Street, Portland, ME 04101 ("Tenant").

WITNESSETH:

WHEREAS, Owner owns the Ocean Gateway Garage, a parking garage containing approximately seven hundred twenty (720) spaces located on a parcel of land approximately thirty-seven thousand (37,000) square feet in area located at 161 Fore Street in the City of Portland, County of Cumberland and State of Maine and shown as "Proposed Lot 3" on plan entitled "Subdivision/Recording Plat" by Owen Haskell, Inc., dated March 22, 2006 as revised April 13, 2006, and recorded in the Cumberland County Registry of Deeds in Plan Book 207, Page 54 (the "Garage"); and

WHEREAS, Owner and Tenant desire to enter into this Parking Lease for the purpose of setting forth the specific terms and conditions of that certain arrangement for parking associated with the development and use by Tenant of the property situated at 25 India Street, Portland, Maine (the "25 India Street Parcel") conveyed by 25 India Street, LLC, a Maine limited liability company, to Tenant by deed of even date as contemplated by a certain Settlement and Reciprocal Release Agreement, also of even date, between Owner, Tenant and others (the "Settlement Agreement") relating to litigation formerly pending in the Business and Consumer Court and in the Cumberland County Superior Court of the State of Maine; and

WHEREAS, Tenant may develop and construct office, retail, residential or other lawful facilities on the parcel located at 25 India Street, Portland, Maine and shall use the Parking Spaces, as defined below, for owners, tenants, renters, licensees, invitees, employees transient users of, and/or owners of condominium units in, the 25 India Street Parcel (collectively, and as so defined, "Qualified Parkers");

NOW, THEREFORE, for good and valuable consideration including the mutual covenants and agreements herein, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Use of Parking Spaces.

a. As of the Rent Commencement Date, as defined in Section 3 of this Parking Lease, Owner hereby leases to Tenant the right to use up to ninety six (96) parking spaces in the Garage upon, subject to and limited by the following terms and

conditions: (i) The parking spaces must be drawn down by Tenant in accordance with Tenant's Draw Down Notice, as defined in Section 1(e) of this Parking Lease, and (ii) The maximum number of parking spaces subject to being drawn down by Tenant's Draw Down Notice shall be the lesser of (x) ninety six (96) parking spaces or (y) the minimum number plus one of parking spaces required by the City of Portland for the development by Tenant of the 25 India Street Parcel in accordance with permitted zoning and land-use ordinances and regulations for such parcel (as so drawn down by Tenant's Draw Down Notice and as limited by such ordinances and land-use regulations, the "Parking Spaces"). All such parking in the Garage shall be in accordance with and subject to the terms and conditions below and such reasonable rules and regulations established from time to time by Owner governing the leasing and use of Parking Spaces by parkers generally in the Garage. Tenant understands and agrees that, in accordance with customary garage operations and management practices, specific parking spaces are not reserved or dedicated for Tenant and the availability of any specific parking space is not guaranteed. The Parking Spaces are intended for use for automobile, motorcycle, van and SUV parking only, not for the parking of any large commercial trucks or other commercial vehicles.

b. Owner shall make available to Tenant, one parking access card each space designated in Tenant's Draw Down Notice other than the spaces for which tenant will be paying rent but which cannot be used for parking because they are necessary for access to the Pedestrian Ramps which connect the Garage to 8 Middle Street referenced in a certain Abutters Agreement of even date between Tenant and Owner or in lieu of parking access cards, such parking codes or other "keys" or means of convenient 24-hour access as shall be available from time to time, which shall in turn be made available to Tenant's Qualified Parkers using the Parking Spaces and which shall provide access to the Parking Spaces for seven days each week and 24 hours of each day.

c. It is understood and agreed that these spaces shall be for Tenant's Qualified Parkers and the Parking Spaces may not be sublet or their use assigned, transferred or loaned to any person or entity who is not a Qualified Parker.

d. The Parking Spaces shall be solely for the benefit of the 25 India Street Parcel and no other properties. For the avoidance of doubt, the Parking Spaces may not be used for the benefit of the property situated at 8 Middle Street now or formerly owned by Hancock & Middle, LLC or for the benefit of the property of Shipyard Brewing Company. This Parking Lease shall be not be assignable, except in connection with the sale of the 25 India Street Parcel with which the Parking Spaces are associated. In no event shall the Tenant sublease the Parking Spaces, or otherwise permit their use or occupancy, at a different rental rate than specified in this Parking Lease, and in no case shall the Tenant sublease or otherwise authorize the use or occupancy of the Parking Spaces by any third person or entity not a Qualified Parker. Tenant acknowledges that its rights under this Parking Lease are and shall be subordinate to the interests of any future mortgagee of the Garage, provided that any such future mortgagee shall enter into a commercially reasonable subordination, non-disturbance and attornment agreement with respect to this Parking Lease. Tenant agrees to attorn to and recognize the holder of any

mortgage on the Garage, now and in the future, in accordance with the terms of such commercially reasonable subordination, non-disturbance and attornment agreement.

e. For Tenant to draw down Parking Spaces as contemplated in Section 1(a)(i) of this Parking Lease, Tenant shall give Owner written notice of its intention to draw down a specific number of Parking Spaces, such number of Parking Spaces drawn down to be subject to the maximum number of Parking Spaces specified in this Parking Lease and subject also to the limitations in number set forth in Section 1(a)(ii) of this Parking Lease. Tenant's written draw down notice to Owner to for the Parking Spaces ("Tenant's Draw Down Notice") shall specify a date no fewer than two (2) years before the date Tenant shall take possession of the Parking Spaces, which date shall be no later than May 1, 2023, and at which date Tenant shall commence the monthly payment of rent under this Parking Lease. Subject to such maximum limitation of ten (10) years limitation for Tenant to have the right to draw down Parking Spaces, Tenant's right to draw down the allowable number of Parking Spaces must be exercised with respect to this Parking Lease on or before May 1, 2021. Tenant shall have the one-time right to extend the date when rent payments will start under Tenant's Draw Down Notice for an additional ninety (90) days after having given such Draw Down Notice provided the Rent Commencement Date does not extend beyond May 1, 2023. Rent under the Parking Lease shall commence immediately at the end of the applicable notice period as aforesaid (i.e., within no more than two (2) years after the Tenant has given Tenant's Draw Down Notice and, in all cases, by May 1, 2023 – whether or not Tenant has given Tenant's Draw Down Notice). In no event shall Tenant ever sublease or otherwise authorize the use or occupancy of the Parking Spaces at a rental rate different than the amount due from Tenant under this Parking Lease. Tenant shall also have the right to cancel or reduce the number of Parking Spaces to be leased under this Parking Lease during the term upon ninety (90) days prior written notice, provided, however, that once such Parking Spaces have been canceled or their number reduced in accordance with such notice, such canceled or reduced Parking Spaces shall no longer be available to be drawn down in the future. In addition, in the event that rental payments are not made as required under this Parking Lease and/or this Parking Lease is duly terminated in accordance its terms and/or this Parking Lease expires, Tenant shall have no further rights to park in the Garage.

f. Notwithstanding any other provision in this Parking Lease to the contrary in the event that a building on the 25 India Street Parcel is not yet constructed or has not yet received a certificate of occupancy by May 1, 2023, Tenant may still Draw Down spaces under the preceding subparagraph provided that Tenant's Draw Down Notice has been given by May 1, 2021, and commence paying monthly rent accordingly, and Tenant may sublet those spaces to third parties who are not Qualified Parkers provided (i) that the spaces are rented at the same monthly rent being charged by Owner to monthly parkers and (ii) that within sixty (60) days following receipt of a certificate of occupancy for the 25 India Street Property, the restriction limiting the use of parking spaces rented hereunder to Qualified Parkers shall recommence.



2. Deposits. There shall be no Deposit for this Lease, but Tenant shall pay to Owner such customary fees and charges as are imposed by Owner upon other tenants of the Garage for lost cards or replacement cards and/or reimbursement for out-of-pocket expenses arising therefrom.

3. Term. The initial term (the "Initial Term") of this Parking Lease shall be thirty (30) years from the Effective Date, with rent payments under Section 5 below, commencing at the end of the applicable notice period specified in Tenant's Draw Down Notice, as it may be extended as set forth in Section 1(e) of this Parking Lease (the "Rent Commencement Date"). Provided that Tenant is not in default hereunder at the time of renewal, the Initial Term may be extended, upon nine (9) months written notice prior to the expiration of the Initial Term, for an additional thirty (30) year term (the "First Option Term", i.e., from May 1, 2043 to April 30, 2073). Provided that Tenant is not in default hereunder at the time of renewal, the First Option Term may be extended, upon nine (9) months written notice prior to the expiration of the First Option Term, for an additional (30) term years (the "Second Option Term").

4. Monthly Rate. The monthly rate for each Parking Space shall be no more than the Average Monthly Parking Rate (as adjusted annually during the Term and during the Option Term or Terms by Owner) for month-to-month parking spaces located in the following parking lots located in Portland, Maine: (i) Ocean Gateway Parking Garage; (ii) Custom House Parking Garage; and (iii) Casco Bay Ferry Terminal Garage, provided that if at any time during the Term the monthly rate for each Parking Space is increased by more than 20% percent during any 12-month period, Tenant may terminate this Lease upon one hundred eighty (180) days written notice to Owner.

In the event that the Average Monthly Parking Rate is not ascertainable, the rent shall be based upon the fair market value of covered parking spaces in the Portland, Maine "Old Port" area (i.e., the area bounded by Congress Street, Franklin Street, the water and Temple/Union Street).

The Average Monthly Parking Rate shall be set at the Rent Commencement Date in the initial Term and may be increased on June 1<sup>st</sup> of each year thereafter so long as the Lease is in effect, provided, however, that Owner shall deliver to Tenant not less than thirty (30) days prior to an increase, written notice of any increase in such rate.

All disputes concerning fair market rental rates shall be resolved in accordance with the arbitration procedure specified in this Parking Lease.

5. Payment. Beginning on the Rent Commencement Date, Tenant shall pay Owner the amount due for the Parking Spaces monthly by one check or wire transfer equal to one-twelfth of the amount of annual rent, to be received by Owner in advance, on or before the first day of each month at Owner's address hereinafter set forth or to such other address (e.g., a manager's) as may be designated by Owner in writing to Tenant from time to time. If the Rent Commencement Date does not fall on the first day of the month, then pro-rated rent for the first partial month shall be due on the Rent Commencement Date.

6. Late Payment. If the monthly payment for the Parking Spaces is not received by Owner by the 1<sup>st</sup> day of each calendar month or on the next business day if the 1<sup>st</sup> day of the month falls on a weekend or legal holiday, Tenant shall pay Owner (a) all unpaid amounts due with respect to the Parking Spaces, and (b) an additional late charge in the amount of five percent (5%) of the monthly payment for the Parking Spaces. Notwithstanding the foregoing, Tenant shall not be required to make such Late Payments for the first late payment event in any twelve (12)-month period if such late paid amounts are otherwise paid within fifteen (15) days of written notice from Owner of such non-payment. If there is more than one such late payment event in a twelve (12) month period, Tenant shall pay Owner the Late Payment charges set forth in this paragraph for such additional events. In the event that the payment of any amounts due from Tenant is not received by Owner within thirty (30) days of delivery of written notice from Owner to Tenant of such non-payment, then Owner shall have each and every remedy provided by law including the right to immediately terminate their Parking Lease and evict Tenant in a forcible entry and detainer ("FED") action for non-payment of rent, provided that if there is any dispute regarding the amount of rent due or whether paid on time, then any FED action shall only be started after arbitration under Section 15 below. Owner shall also be entitled to a reimbursement of its reasonable attorneys' fees incurred in such FED action. By way of clarification, if there is a dispute over the amount of rent due or whether rent was timely paid, it shall be handled under Paragraph 15 below.

7. Registration of Vehicles. All vehicles utilizing Parking Spaces shall be registered with Owner on forms provided to Tenant by Owner. No fees or charges shall be assessed for the registration of vehicles. Tenant agrees to exercise reasonable efforts to keep a current log of names of users and license numbers for employees using Parking Spaces and, if requested by Owner, provide updated copies of the log to Owner for inspection.

8. Assignment of Parking Lease as Collateral. Tenant shall have the right from time to time to assign this Parking Lease as collateral for a mortgage loan secured by the 25 India Street Property, provided that the rights for parking pledged under this Parking Lease shall not be severable from the mortgage or pledge of the 25 India Street Property such that any mortgagee, pledgee or collateral assignee of this Parking Lease, upon foreclosure or the exercise of its rights as a secured creditor, could liquidate the pledged parking rights separately from the liquidation of the 25 India Street Property. Owner agrees to provide simultaneous copies of any notices to Tenant hereunder, to said mortgagee.

9. Insufficient Parking Spaces. It is understood that, in accordance with the customary garage operations and management practices, Owner shall enter into parking agreements with other parties to use the Parking Spaces at times they are not being used by the Tenant. Owner agrees to use reasonable good faith efforts to ensure that there are sufficient parking spaces available in the Garage to satisfy the rights of Tenant hereunder. In the event there exists insufficient parking spaces in the Garage to meet the requirements of Tenant at any time Tenant exercises its rights to use parking spaces under this Parking Lease, Owner shall be obligated to terminate a sufficient number of monthly tenant-at-will parkers in the Garage within thirty (30) days thereafter as shall, in Owner's reasonable judgment, ensure the regular availability of sufficient parking spaces to meet such requirements of Tenant hereunder. If Tenant or any person entitled to a Parking Space hereunder is unable to find a parking space in

the Garage during allowable Parking Times, Tenant shall notify the Owner of the Garage, or Owner's garage manager as designated from time to time by Owner, within five (5) hours thereof (if between 9 a.m. and 5 p.m.) or if after 5 p.m. then by 10 a.m. on the day after Tenant or any person entitled to a Parking Space hereunder is unable to find a parking space in the Garage, following which Tenant shall be entitled to a credit against the next month's parking fee in an amount equal to the hourly parking rate at the Garage times eight (8) for each day that an employee of Tenant is unable to find a parking space, unless Owner can reasonably establish and document that a parking space was available in the Garage. The credits against parking fees set forth in this Section do not relieve Owner of its obligation to use reasonable good faith efforts to ensure that sufficient spaces are available, as provided herein. In the event Owner is not able to satisfy its obligations under this paragraph by terminating a sufficient number of monthly tenant-at-will parking patrons within the aforesaid thirty (30) days, the parties shall immediately commence good faith negotiations to reach a mutually satisfactory resolution to the issue of insufficient parking spaces within thirty (30) days.

10. Maintenance and Repair of Garage. Subject to the provisions of Paragraph 13 below, Owner shall maintain the Garage in good condition and repair and suitable for the safe parking of vehicles. Owner shall not be deemed in default in any of its obligations under this Parking Lease during any period in which all or any significant portion of the Garage is closed to all parkers for required maintenance and repairs, provided that except in cases of emergency Owner provides Tenant with seven (7) days written notice of such closing of all or any significant portion of the Garage (i.e., more than 100 spaces at any one time), or for any other reasons beyond the control of Owner. Owner shall use reasonable efforts to undertake such maintenance and repair during such times as shall, in the reasonable judgment of Owner, minimally interfere with parking in the Garage. If such maintenance shall cause the Parking Spaces or some significant portion thereof to be unavailable for three (3) or more consecutive days, Tenant shall be entitled to a pro rata credit against the monthly parking fee to the extent of any adverse impact of the availability of the parking spaces demised under this Lease. In the event Owner is not able to satisfy its obligations under this paragraph within the aforesaid time frame, the parties shall immediately commence good faith negotiations to reach a mutually satisfactory resolution to the issue of available parking spaces within thirty (30) days.

11. Insurance. Each party shall maintain or cause to be maintained commercial general liability insurance, the form of which and amount of coverage to be reasonably acceptable to the other party but at any rate not less than \$2,000,000 combined single limit, with each policy of insurance coverage containing waiver of subrogation. Each party further agrees to maintain such insurance with acceptable coverage limits during the term of this Parking Lease following the Rent Commencement Date and shall provide the other party with not less than fifteen (15) days written notice prior to the cancellation or expiration of any insurance policy required to be maintained pursuant to this Parking Lease. Owner shall be listed as an additional insured on Tenant's liability policy. Tenant shall procure such coverage and maintain it continually in force during the term of this Parking Lease on and after the date Tenant shall have drawn down and taken possession of the Parking Spaces in accordance with the provisions of Section 1(e) hereof.



12. Damage to Vehicles or Personal Property. Owner shall not be responsible for any damage or loss to vehicles or personal property belonging to any person using any of the Parking Spaces, except for such damage or loss resulting from the Owner's breach of this Parking Lease arising from its gross negligence or willful misconduct or the gross negligence or willful misconduct of Owner's, employees, agents or independent contractors.

13. Cessation of Garage Business. Owner shall not be deemed in default in any of its obligations under this Parking Lease in the event Owner ceases temporarily to operate the Garage, or any portion thereof, due to events beyond the control of Owner, which events may include without limitation, acts of government, embargoes, fire, flood, explosions, hurricanes, tornadoes, acts of God, terrorism or public enemy, strikes, labor disputes, vandalism, riots, or any similar events which, in the reasonable judgment of Owner, make use of the Garage impossible or impractical. If there is a "Casualty Event" (as defined below) the Owner shall have the right to elect whether or not to rebuild or restore the Garage within 120 days of the Casualty Event. If Owner elects to rebuild or restore the Garage, then this Parking Lease shall remain in effect except that Tenant's obligation to pay rent shall abate pro-rata so long as some or all of the Parking Spaces have not been and are not available. If Owner elects not to rebuild or restore the Garage, then this Parking Lease shall terminate upon notice thereof from Owner to Tenant. If Owner elects to rebuild or restore the Garage or if there is damage to the Garage that does not rise to the level of a Casualty Event, Owner agrees to use diligent good faith efforts to complete the reconstruction or restoration within a reasonable period of time. Notwithstanding the foregoing, Owner agrees that if there is a Casualty Event, Owner shall elect to rebuild or restore the Garage, if the insurance proceeds available by reason of such Casualty Event are sufficient to rebuild or restore and so long as said proceeds are not otherwise claimed by Owner's lender under any mortgage on the Garage or otherwise unavailable. A "Casualty Event" shall occur if there is destruction of more than fifty(50%) percent of the Garage. Upon such termination of this Parking Lease by either Owner or Tenant, all rights and obligations of Owner and Tenant hereunder shall cease and shall be of no further force and effect except for such obligations as shall by their express terms, survive termination of this Parking Lease, subject to compliance with Paragraph 14 below. Tenant shall remain liable to Owner for payments due Owner accrued and unpaid up to the date of said termination.

14. Compliance with Terms and Conditions: Indemnity. Tenant shall be responsible for ensuring that the use of the Garage by its employees complies with the terms and conditions of this Parking Lease and such other reasonable rules and regulations as are established from time to time by Owner governing the use of the Garage generally by parking patrons. Tenant hereby agrees to indemnify and hold harmless Owner from any claim, costs, liability and expense including, but not limited to, reasonable attorneys' fees and expenses, arising from or attributable to Tenant's or its guest's or employee's use of the Garage hereunder in violation of this Parking Lease or such rules and regulations or attributable to Tenant's breach of its obligations under this Lease. Owner hereby agrees to indemnify and hold harmless Tenant from any claim, costs, liability and expense, including but not limited to, reasonable attorneys' fees and expenses, arising from or attributable to Owner's acts or failure to act pursuant to its obligations under this Lease. This agreement to indemnify shall survive termination of this Parking Lease.

15. Disputes.

a. Any controversy, claim or cause of action arising out of or relating to this Agreement, other than as to the obligation to pay rent and any additional rent without offset or deduction as provided in this Parking Lease, shall be finally settled by arbitration by a single arbitrator appointed in accordance with and conducting arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the power to grant equitable remedies in addition to imposing monetary damages. Arbitration shall be held in Portland, Maine, or such other location as the parties agree. All arbitration under this paragraph shall be final, binding and conclusive. The parties shall separately bear their costs and expenses, including attorneys' fees, associated with any such dispute or arbitration without regard to which of them is the prevailing party.

b. Despite subparagraph a. above, if any party believes it necessary to seek injunctive relief or a provisional remedy (such as forcible entry and detainer or an attachment or trustee process), such party may file a civil action in any court having jurisdiction for such foreclosure, injunctive relief or provisional remedy. The arbitration procedures specified in subparagraph a. above, however, shall apply to the determination of the merits of any monetary claim or defense, and the court proceeding shall extend no further than to provide a kind of relief or remedy not readily available under the subparagraph a. above procedures.

c. Tenant and Owner for themselves, their heirs, successors, and assigns hereby knowingly, willingly and voluntarily waive any and all rights such party may have to a trial by jury in any forcible and detainer ("FED") action or proceeding brought by Owner or Owner's successors and/or assigns based upon or related to the provisions of this Parking Lease. Owner and Tenant hereby agree that any such FED action or proceeding shall be heard before a single judge of the appropriate District Court or a single justice of the appropriate Superior Court, or a Federal District Court Judge sitting in the District of Maine.

16. Estoppel Certificate. At any time, and from time to time, upon the written request of Owner or any mortgagee, Tenant within ten (10) days of the date of such written request agrees to execute and deliver to Owner and/or such mortgagee, without charge and in a form reasonably satisfactory to Owner, Tenant, and/or such mortgagee, a written statement: (i) ratifying this Lease; (ii) confirming the commencement and expiration dates of the term of this Lease; (iii) certifying that Tenant is in occupancy of the Leased Premises, and that the Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated and agreeing not to amend, modify or cancel this Lease without mortgagee's written consent; (iv) certifying that all conditions and agreements under this Lease to be satisfied or performed by Owner have been satisfied and performed except as shall be stated; (v) certifying that Owner is not in default under the Lease and there are no defenses or offsets against the enforcement of this Lease by Owner, or stating the defaults and/or defenses claimed by Tenant; (vi) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid and

agrees not to prepay rent more than 10 days in advance; (vii) reciting the amount of security deposit deposited with Owner, if any; and (viii) any other information which Owner or the mortgagee shall reasonably require. Owner agrees, upon written request of Tenant or Tenant's mortgagee to execute and deliver, without charge, an estoppel certificate addressing items (i)-(iii) and (iv) (but addressing Tenant's performance) and (v) (but addressing Tenant's performance) and items vi and vii.

17. Subordination. Tenant agrees that, except as hereinafter provided, this Lease is, and all of Tenant's rights hereunder are and shall always be, subject and subordinate to any mortgage or leases of the Garage pursuant to which Owner has or shall retain the right of possession of the Garage or security instruments (collectively called "Mortgage") that now exist, or may hereafter be placed upon the Garage and to all advances made or to be made thereunder and to the interest thereon, and all renewals, replacements, modifications, consolidations, or extensions thereof; provided that so long as Tenant is in full compliance with monetary the terms and provisions of this Lease and in full material compliance with all non-monetary terms and provisions of this Lease (with all defaults, if any, fully and timely cured within applicable grace periods), any such Mortgagee, lessor or purchaser at a foreclosure sale shall recognize Tenant in accordance with the terms hereof; provided further that if the holder of any such Mortgage ("Mortgage") or if the purchaser at any foreclosure sale or at any sale under a power of sale contained in any Mortgage shall at its sole option so request, Tenant shall attorn to, and recognize such Mortgagee or purchaser, as the case may be, as Owner under this Lease for the balance then remaining of the term of this Lease, subject to all terms of this Lease, and that the aforesaid provisions shall be self-operative and no further instrument or document shall be necessary unless required by any such Mortgagee or purchaser. Should Owner or any Mortgagee or purchaser desire confirmation of either such subordination or such attornment, as the case may be, Tenant upon written request, and from time to time, shall execute and deliver without charge and in commercially reasonable form satisfactory to Owner, the Mortgagee or the purchaser all instruments and/or documents that may be requested to acknowledge such subordination and/or agreement to attorn, in recordable form. In the event Tenant fails to execute and deliver the instruments and documents as provided for in this paragraph within the time period set forth herein, the parties hereto shall immediately commence good faith negotiations to reach a mutually satisfactory resolution to the issue within thirty (30) days. In the event that the parties shall fail to come to agreement within such thirty (30) day period, either party may submit the dispute to resolution by arbitration as provided in this Parking Lease. Failure of either party to comply with any final arbitration award shall constitute an event of default under this Parking Lease.

18. Assignment by Tenant. This Parking Lease may not be assigned, transferred, encumbered or conveyed, or hypothecated, in whole or in part, by Tenant to any other person or entity, under any circumstances, except to a purchaser, lessee, mortgagee, condominium association or other transferee, of the 25 India Street Parcel.

19. Miscellaneous.

a. This Parking Lease and the rights and obligations hereunder shall be binding upon the Owner and its successors and assigns in interest. In the event that Owner sells the Garage to a third party, upon the assignment and assumption of this

Parking Lease by the third party, the Owner shall have no further obligations hereunder for any period of time following the assignment and assumption.

b. Except as otherwise provided herein, any notice relating in any way to this Parking Lease shall be in writing and shall be either hand delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

To Owner: Ocean Gateway Garage LLC  
c/o Paul J. Nasser, CFO/COO  
Intercontinental Real Estate Corp.  
1270 Soldiers Field Road  
Boston, MA 01235

With a copies to: James M. Bradley, Esq.  
Bradley & Associates  
1270 Soldiers Field Road  
Boston, MA 02135-1003

Katharine E. Bachman, Esq.  
WilmerHale  
60 State Street  
Boston, MA 02109

Paul F. Driscoll, Esq.  
Norman, Hanson & DeTroy, LLC  
415 Congress Street  
P.O. Box 4600  
Portland, ME 04112-4600

To Tenant: Eight Middle Land Company LLC  
86 Newbury Street  
Portland, Maine 04101

With a copies to: George J. Marcus, Esq.  
Marcus, Clegg & Mistretta, P.A.  
One Canal Plaza, Suite 600  
Portland, ME 04101

and

Nathan H. Smith, Esq.  
Bernstein Shur Sawyer & Nelson  
100 Middle Street  
P.O. Box 9729  
Portland, ME 04104-5029



and such notice shall be deemed delivered upon the earlier of actual receipt or three days after deposit in the U.S. mails as set forth above or, in the case of hand delivery, when received in person with a written acknowledgement of receipt. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above and also add persons or addresses for notices to lenders or their counsel.

c. All paragraph headings in the Parking Lease are for convenience of reference only and are of no independent legal significance.

d. This Parking Lease may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

e. Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Parking Lease, which alone fully and completely expresses their entire Parking Lease.

f. If any part of any term or provision of this Parking Lease shall be held or deemed to be invalid, inoperative or unenforceable to any extent by a court of competent jurisdiction, such circumstance shall in no way affect any other term or provision of this Parking Lease, the application of such term or provision in any other circumstances, or the validity or enforceability of this Parking Lease.

g. The language used in this Parking Lease shall be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction shall be applied against either party. Without limiting the generality of the foregoing, the language in all parts of this Parking Lease shall in all cases be construed as a whole according to its fair meaning, strictly neither for nor against any party hereto, and without implying a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who drafted the same. It is hereby agreed that the representatives of both parties have participated in the preparation hereof.

h. This Parking Lease may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument.

i. This Parking Lease may not be recorded but a Memorandum hereof containing such information as is required by 33 M.R.S.A. § 201 may be recorded by either party at any time after the execution hereof. Owner agrees to execute and have acknowledged and delivered to Tenant for recording at the Cumberland County Registry of Deeds, such a Memorandum, if tendered by Tenant.

j. This Parking Lease shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

IN WITNESS WHEREOF, the undersigned have caused this Parking Lease to be executed by their duly authorized representatives.

[Signatures Located on Following Pages]

OWNER:

OCEAN GATEWAY GARAGE, LLC  
a Maine limited liability company

By: RIVERWALK VENTURE, LLC a Maine limited  
liability company

By: Intercontinental Fund IV Ocean Gateway, LLC, its Manager

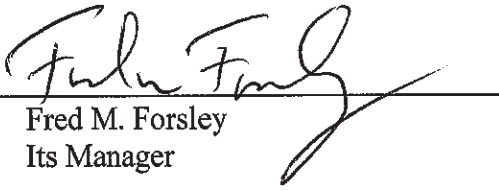
By: Intercontinental Real Estate Investment Fund IV, LLC, its  
Manager

By: Intercontinental Real Estate Corporation, its Manager

By:   
Peter Palandjian

TENANT:

EAST INDIA LAND COMPANY LLC

By:   
Fred M. Forsley  
Its Manager



MEMORANDUM OF LEASE

This Memorandum of Lease is made this 3<sup>rd</sup> day of May, 2013, pursuant to Title 33, Section 201 of the Maine Revised Statutes with respect to the following described Parking Lease (the "Parking Lease"):

Effective Date of Lease: As of May 1, 2013

Name of Landlord: Ocean Gateway Garage LLC, a Maine limited liability company

Name of Tenant: East India Land Company LLC, a Maine limited liability company

Initial Term: 30 Years from the Effective Date

Extension Terms: Two renewal terms – each for additional thirty (30) year term

Right of First Refusal: None

Option to Purchase: None

Description of Demised Premises:

Right to rent up to (x) ninety six (96) parking spaces or (y) the minimum number plus one of parking spaces required by the City of Portland for the development by Tenant of the 25 India Street Parcel in accordance with permitted zoning and land-use ordinances and regulations for such parcel in the Ocean Gateway Garage, a parking garage containing approximately seven hundred twenty (720) spaces located on a parcel of land approximately thirty-seven thousand (37,000) square feet in area located at 161 Fore Street in the City of Portland, County of Cumberland and State of Maine and shown as "Proposed Lot 3" on plan entitled "Subdivision/Recording Plat" by Owen Haskell, Inc., dated March 22, 2006 as revised April 13, 2006, and recorded in the Cumberland County Registry of Deeds in Plan Book 207, Page 54.

Nothing herein shall or does change or modify the terms of the Parking Lease.

IN WITNESS WHEREOF, Ocean Gateway Garage LLC has caused this instrument to be executed by its duly authorized representatives this 3<sup>rd</sup> day of May, 2013.

[Signatures Continued on the Following Page]

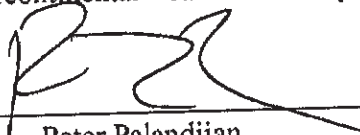
OCEAN GATEWAY GARAGE, LLC  
a Maine limited liability company

By: RIVERWALK VENTURE, LLC a Maine limited  
liability company

By: Intercontinental Fund IV Ocean Gateway, LLC, its Manager

By: Intercontinental Real Estate Investment Fund IV, LLC, its  
Manager

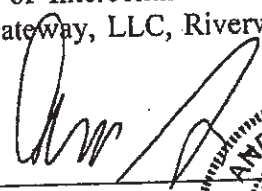
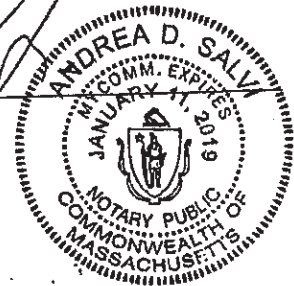
By: Intercontinental Real Estate Corporation, its Manager

By:   
Peter Palandjian

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 3rd day of May, 2013, before me, the undersigned notary public, personally appeared Peter Palandjian, President and Treasurer of Intercontinental Real Estate Corporation, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the foregoing instrument, and acknowledged to me that he signed it voluntarily for its stated purpose and as the free act and deed of said Intercontinental Real Estate Corporation and each of Intercontinental Real Estate Investment Fund IV, LLC, Intercontinental Fund IV Ocean Gateway, LLC, Riverwalk Venture LLC and Ocean Gateway Garage LLC.

  
Notary Public 

Received  
Recorded Register of Deeds  
May 07, 2013 03:54:50P  
Cumberland County  
Pamela E. Lovley

### 3. TECHNICAL AND FINANCIAL CAPACITY

#### 3.1 TECHNICAL CAPACITY

The applicant has assembled a highly qualified team of professionals to plan, permit, and develop construction documents for the project. The Team is working under the direction of Mr. Nathan Bateman of Bateman Partners, LLC as Project Developer.

The Team services will be provided by the following companies and their respective team leaders:

#### 3.2 CONSULTANT TEAM

<i>Civil Engineer</i>	Joseph A. Laverriere, P.E. Fay, Spofford & Thorndike 778 Main Street, Suite 8 South Portland, ME 04106 (207) 775-1121 – Work (207) 879-0896 – Fax (207) 749-5088 – Cell jlaverriere@fstinc.com
<i>Surveyor</i>	John Swan Owen Haskell, Inc. 390 US Route 1, Unit 10 Falmouth, Maine 04105 (207) 774-0424 – Work (207) 774-0511 – Fax jswan@owenhaskell.com
<i>Architect</i>	David Lloyd Archetype, PA 48 Wharf Street Portland, ME 04101 (207) 772-6022 – Work (207) 772-4056 – Fax 207-671-9194 – Cell lloyd@archetypepa.com
<i>Attorney</i>	Ronald Ward Drummond Woodsum 84 Marginal Way, Suite 600 Portland, ME 04101 (207) 772-1941 – Work (207) 772-3627 – Fax RWard@dwmlaw.com
<i>Lighting/Site Electrical</i>	Will Bennett, Jr. Bennett Engineering P.O. Box 297 Freeport, ME 04032 (207) 865-9475 – Work (207) 865-1800 – Fax Will@bennettengineering.net

<i>Geotechnical Engineer</i>	William Peterlein P.E. Summit Geoengineering Services 145 Lisbon Street, Suite 601 Lewiston, ME 04240 (207) 576-3313 – Work bpeterlein@summitgeoeng.com
<i>Environmental Engineering</i>	Robert Hoffman, P.E. Hoffman Engineering, Inc. 640 Ten Rod Road North Kingstown, RI 02852 (401) 294-9032 – Work      (207) 294-1288 – Fax hoffmanengineering@verizon.net

### **3.3 EXPERIENCE OF PROJECT TEAM**

The team of consultants retained by the Developer has expertise and experience in the design of similar projects. Resumes of key personnel for the development team can be provided upon request.

The applicant also has significant experience in the development and management of large commercial projects as evidenced by information provided in this submission's cover letter. A listing of the additional real estate projects for which the Applicant's development team has been involved can be provided upon request.

### **3.4 FINANCIAL CAPACITY**

The applicant has the means at its disposal for financing the proposed 185 Fore Street project. A letter of financial capacity for the project is contained in Attachment E.

### **3.5 CONSTRUCTION COST ESTIMATE**

The project has an overall construction cost estimate of \$3,900,000. This construction cost value is considered preliminary and subject to change as building design and project layout is refined, etc.

### **3.6 ATTACHMENTS**

Attachment E – Letter of Financial Capacity

**ATTACHMENT E**

**Letter of Financial Capacity**



May 2, 2014

Mr. Jeff Levine  
Director  
City of Portland Planning and Development  
389 Congress Street  
Portland, Maine 04101

Re: Bateman Partners – 185 Fore Street

Dear Mr. Levine,

The Bank is currently in discussions with the developer concerning a commercial project located at 185 Fore Street in Portland. Although no application for financing has yet been submitted to the Bank and no commitment or proposed terms have been presented by the Bank, we have a high degree of interest in providing construction financing for the project.

The Bank has worked with the project developer, Bateman Partners, on several successful construction projects. Based on the developer's financial capacity, development experience, and a preliminary review of the project's cash flow projections, we believe that the project and sponsor have the necessary components to develop and operate the project successfully.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Michael P. O'Reilly".

Michael P. O'Reilly  
Vice President, Commercial Banking

## **4. CONSTRUCTION MANAGEMENT PLAN**

The following information is provided in accordance with the City of Portland Code of Ordinances Chapter 14 Land Use, Section 14-527(g)(1).

### **4.1 CONSTRUCTION MANAGEMENT PLAN**

Bateman Partners, LLC is seeking to commence construction during the spring of 2015 and complete work by the spring of 2016. The construction will involve site work and new building construction. The attached construction plan outlines the anticipated timeline and sequence of activities.

### **4.2 ATTACHMENTS**

Attachment F – Construction Management Plan

**ATTACHMENT F**

**Construction Management Plan**



**PROPOSED CONSTRUCTION MANAGEMENT PLAN FOR THE  
185 FORE STREET MIXED USE DEVELOPMENT PROJECT**

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**CONSTRUCTION APPROACH NARRATIVE:**

The core element of the plan is to have the project management team and the field supervision team working together out of an on-site construction office. This team will be linked directly to the General Contractor's project management and job cost accounting systems. The goal of this arrangement is to ensure clear and timely communication within the General Contractor team and seamless coordination of project activities. Project management will be overseen by a Senior Project Manager working out of the General Contractor's home office. The General Contractor will locate a Project Manager and one or more Superintendents on the site for direct oversight and management of the Infrastructure work, site work and building.

The work involves the construction of a new four story mixed use building. This work will require coordination with the utility companies, City of Portland, and adjacent property owners along Fore and India Streets.

Key issues to be addressed include:

- Public safety and continued accessibility along the adjacent streets
- Communication with abutters
- Traffic management
- Parking for workforce
- Coordination of material deliveries
- Laydown and material storage areas
- Crane pads and erection sequences (if required)
- Waste management
- Construction office areas
- Designated areas for stockpiled materials
- Snow removal

The General Contractor will work with the City of Portland, owner and other entities to coordinate with the various off site construction activities including all work within the Public Right of Ways.

## **5. STORMWATER MANAGEMENT**

The following information is made in accordance with the City of Portland Code of Ordinances Chapter 14 Land Use, Section 14-526(b)(3).

### **5.1 OVERVIEW**

In accordance with Section 5 of the City of Portland Technical Manual, a Stormwater Management Plan has been prepared for the project, demonstrating compliance with the regulations of MaineDEP Chapter 500 Stormwater Management Rules, including the General, Basic, and Flooding Standards. A copy of the Stormwater Management Plan is provided as Attachment G.

### **5.2 ATTACHMENTS**

Attachment G – Stormwater Management Plan

**ATTACHMENT G**

**Stormwater Management Plan**

**STORMWATER MANAGEMENT REPORT  
(BASIC, GENERAL, AND FLOODING  
STANDARDS)**

**185 FORE STREET  
MIXED-USE COMPLEX**

**PREPARED FOR:**

**BATEMAN PARTNERS, LLC  
P.O. BOX 3572  
PORTLAND, MAINE 04104**

**PREPARED BY:**

**FAY, SPOFFORD & THORNDIKE  
778 MAIN STREET, SUITE 8  
SOUTH PORTLAND, MAINE 04106  
(207) 775-1121**



*Michael E. MW*  
7-8-14

**JULY 2014**

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### **APPENDICES**

A – Inspection & Maintenance Manual for Stormwater Management and Related Stormwater Facilities

# STORMWATER MANAGEMENT REPORT

## **1.0 INTRODUCTION**

Fay, Spofford & Thorndike (FST) has been retained by Bateman Partners, LLC to assist in the preparation of site design and site permitting for a proposed 6,060 SF footprint multi-unit building located at 185 Fore Street in Portland, Maine. The development will include a new multi-unit commercial and residential building and related infrastructure improvements. This proposed project will create a total of 6,947 SF of developed area, 99% of which will be new structure area (building and other impervious surfaces).

The development site is located on the northeast side of India Street at the intersection of Fore Street in Portland. The site is owned by East India Land Company, LLC. The site currently drains to the City's combined sanitary and storm sewer system in India Street. Runoff from the proposed building will drain through a roofdrain cartridge filter unit prior to entering the municipal drainage system. The use of the cartridge filter unit will allow the treatment of runoff from a 3.9" rain event.

## **2.0 EXISTING SITE CONDITIONS**

The 6,947 SF site was previously developed with a building associated with the American Hoist & Derrick Company; however, this building was previously razed with only remnants of the foundation visible on the site. After demolition of the former building, the building foundation was filled and the site graded to create a lawn area. The site is currently developed with the following land cover:

<b>TABLE 1 – LAND COVER</b>	
<b>Current Land Cover</b>	<b>Square Feet (SF)</b>
Pervious	6,360
Impervious	587
<b>Total</b>	<b>6,947</b>

The existing site is comprised of developed grass and gravel areas. The adjacent site has an existing 11 foot wide easement that is currently gravel and benefits the project site.

The land area slopes northwest to southeast towards Fore Street with approximately six (6) feet of grade differential. Most of the grade differential is along the India Street frontage. As mentioned previously, there are remnants of the former building foundation along India Street as well as a masonry wall along the northwesterly site boundary that forms a border to the Micucci parking lot. Finally, there is a portion of sheet pile wall within the northerly corner of the site that is believed to be a remnant of the temporary excavation system installed as part of the Ocean Gateway Garage development. The site currently drains towards Fore Street where stormwater is collected and drains to the City of Portland municipal combined sewer system in India Street.

The India Street combined sewer system conveys runoff south to the Fore Street Pump Station where it is pumped to the City's East End Wastewater Treatment Facility and treated before discharging into Casco Bay.

The existing project site is depicted on the Boundary and Topographic Survey provided in the project drawings.

### 3.0 PROPOSED PROJECT

The proposed project will include redevelopment of 6,947 SF, 99% of which will be new impervious area.

The proposed project includes a 6,060 SF building and surrounding walkways. The adjacent 11 foot wide easement made up of gravel area that benefits the site will be paved as part of this project. The proposed building will have its main retail entry on India Street, and its main residential entry on Fore Street. The proposed building will essentially fill the site. Exterior improvements include installation of new utility services to the building for water, sewer, natural gas, electric, telephone and communications. In addition, the proposed site improvements include replacement of the sidewalks along India and Fore Street with brick sidewalks. The applicant has secured parking within the Ocean Gateway Garage through a lease agreement; therefore, no new parking is proposed as part of the project.

Runoff from the proposed roof area will be captured and routed through a Fabco cartridge filter unit located within the building. Runoff will then be piped to the existing catch basin on the corner of India Street and Fore Street that is part of the City's municipal combined sewer system within India Street. Runoff from remaining site areas will continue to drain over land to existing drainage inlets. The entire site will continue to drain to the municipal combined sewer network in India Street. Overall drainage patterns will remain as they are today.

The proposed land use for the site after development will be as follows:

<b>TABLE 2 – POSTDEVELOPMENT LAND USE</b>		
<b>Proposed Land Cover</b>	<b>Square Feet (SF)</b>	<b>Change from Current (SF)</b>
Pervious	55	-6305
Impervious	6,892	+6,305
<b>Total</b>	<b>6,947</b>	

### 4.0 APPLICABLE STORMWATER REQUIREMENTS

This project does not meet the thresholds which require a MaineDEP Stormwater Permit; however, the City of Portland Code of Ordinance requires any stormwater management design to meet the MaineDEP Chapter 500 Regulations for the Basic, General, and Flooding Standards. The project site features a previously approved design to meet the flooding standard. A similar project to the one proposed was approved in 2006 as part of the former Eastern Waterfront Development project, which included the Ocean Gateway parking Garage and a proposed office building on the Fore Street and India Street parcel. According to the stormwater analysis prepared by Woodard & Curran, this approved project removed approximately 1.27 acres of tributary area from the combined sewer system in India Street. This was done by treating and regulating peak flows of stormwater from the Ocean Gateway Parking Garage and conveying the runoff to Casco Bay via the Hancock Street storm drain network. The roof runoff from the previously proposed office building on the corner of Fore and India Streets was designed to connect to the combined sewer because there is no separate storm drain in the immediate vicinity. The significant reduction in area tributary to the combined sewer resulted in a reduction in stormwater peak flow rates. The currently proposed project will maintain this previously approved runoff pattern. A dedicated roof drain from the proposed project will connect to the existing catch basin at the corner of Fore and India Streets, which will allow for further reduction in stormwater runoff to the combined system if the India Street storm drain network is separated

from the sanitary sewer in the future. FST understands that the City Public Services Department supports this approach.

**5.0 STORMWATER MANAGEMENT OBJECTIVES**

The goal of the Stormwater Management Plan is to design, operate, and maintain the development to avoid downstream erosion or significant water quality impairment.

This goal will be achieved by:

- Designing the project to meet the Portland Stormwater Management Standards and the MeDEP Chapter 500 Basic Standards, General Standards, and Flooding Standards (revised October 2010).
- Designing water quality measures to provide long-term removal of non-point contaminants by treating runoff from storm events up to the 1-year storm (2.5 inch storm).
- Implementing a plan to control erosion, sedimentation, or fugitive dust emissions during construction.
- Maintenance of the Stormwater Management System in accordance with the Stormwater O&M Manual (provided as a separate document).

The plan has been designed in accordance with the City of Portland Stormwater Rules.

**6.0 STORMWATER MANAGEMENT QUALITY SUMMARY**

To meet the General Standards, the project will utilize a Fabco Roofdrain StormBasin cartridge filter unit installed within the building to treat the entire developed building rooftop, which encompasses 6,060 SF. These units filter debris and heavy metals using Fabco media cartridges. These systems are suited to the project site due to the limited site space available for more traditional stormwater treatment measures. The roofdrain filter unit contains two cartridge filters capable of treating a peak discharge rate of 0.52 CFS and bypassing flows up to 1.89 CFS.

Peak flow rates of runoff from the proposed roof and tributary to the filter unit are provided in the table below:

<b>TABLE 9</b>			
<b>PEAK RATES OF RUNOFF TRIBUTARY TO ROOFDRAIN FILTER UNIT</b>			
<b>1 Yr Storm Event (CFS)</b>	<b>2 Yr Storm Event (CFS)</b>	<b>10 Yr Storm Event (CFS)</b>	<b>25 Yr Storm Event (CFS)</b>
0.33	0.39	0.62	0.73

The Fabco two cartridge filter unit is capable of treating runoff from storms up to 3.9 inches, which meets the objective of treating runoff from the 1-year design storm event. The filter unit is capable of bypassing flows from storms greater than 14 inches, which is far greater than the 25-year storm event.

**7.0 CHAPTER 500 TREATMENT PERCENT COMPLIANCE**

The existing project site is entirely developed and contains 587 SF of impervious area. The proposed project will result in 6,305 SF of additional impervious area. The existing wall remains and gravel areas will be replaced with rooftop.



In order to meet the general standard, at least 95% of the new impervious area, and 80% of the redeveloped area must receive treatment. This standard will be met through the use of the proposed Fabco cartridge filter system, which will treat runoff from the 6,060 SF of rooftop. A summary of the water quality treatment percentages is provided below:

<b>TABLE 10 WATER QUALITY SUMMARY</b>				
	<b>New Impervious Area (SF)</b>	<b>Treated Impervious (SF)</b>	<b>Developed Area (SF)</b>	<b>Treated Developed (SF)</b>
	6,305	6,060	6,947	6,060
<b>PERCENTAGE</b>		<b>96 %</b>		<b>87 %</b>

As indicated in the summary table, the proposed design exceeds the required treatment standards of the General Standard through the implementation of the roofdrain filter unit.

### **8.0 EROSION CONTROL**

Erosion Control will be provided on site during construction in the form of a perimeter siltation fence, and storm drain catch basin inlet protection SiltSacks®. Siltation fence shall be installed down slope of any disturbed areas to trap runoff-borne sediments until the site is revegetated. The silt fence shall be installed per the detail provided in the project drawings and inspected immediately after each rainfall and at least daily during prolonged rainfall. SiltSacks® will be installed at catch basin inlets to prevent silt from entering the storm drain system and remain in place until the tributary drainage area has been stabilized. SiltSacks® shall be inspected after each rainfall and repairs made as necessary, including the removal of sediment. Site specific erosion control notes and details, including requirements for inspection, maintenance, and record keeping are located directly on the project drawings.

### **9.0 OPERATIONS AND MAINTENANCE**

An Operations & Maintenance Manual has been prepared and accompanies this application in Appendix A.

### **10.0 APPENDICES**

A – Inspection & Maintenance Manual for Stormwater Management and Related Stormwater Facilities

**APPENDIX A**

**INSPECTION & MAINTENANCE MANUAL  
FOR STORMWATER MANAGEMENT AND  
RELATED STORMWATER FACILITIES**

**INSPECTION AND MAINTENANCE FOR  
185 FORE STREET MULTI-USE COMPLEX**

**PREPARED FOR:**

**BATEMAN PARTNERS, LLC  
P.O. BOX 3572  
PORTLAND, MAINE 04104**

**PREPARED BY:**

**FAY, SPOFFORD & THORNDIKE  
778 MAIN STREET, SUITE 8  
SOUTH PORTLAND, MAINE 04106  
(207) 775-1121**

**JULY 2014**

## A. INTRODUCTION

The 185 Fore Street multi-use complex features a Fabco cartridge filter unit, Model 10080-1, located within the building. The stormwater management system must be regularly inspected and maintained to ensure that each component is performing as intended throughout its life.

## B. FABCO MODEL 10080-1 STORMBASIN CARTRIDGE FILTER UNIT

Preface: The roof drain filter unit is intended to provide water quality treatment for runoff from the proposed roof surface prior to discharge into the municipal drainage system in Hancock Street Extension. Primary contaminants from the roof include bird waste, metals, dust, and related pollutants.

Inspection: The roof filter unit must be inspected to ensure proper function during rain events. Primary inspection goals include removal of debris, leaves, or related solids preventing filtering and water pass thru or blocking the internal overflow.

Maintenance: If the filter is not draining within 24 hours, the filter media shall be replaced in accordance with the manufacturer's instructions. Debris must be removed from the filter unit. With all debris removed from the StormBasin the filter cartridge(s) will be exposed at the bottom. To remove the cartridge(s) reach down into the basin and firmly grasp the plastic outer rim of the cartridge body just below the foam, twist the cartridge body counter-clock-wise about ¼ turn until it stops, and lift the cartridge straight up to remove. Insert the new StormBasin cartridge down through the hole in the base of the unit. The colored ring on the cartridge should be facing upwards. Push the cartridge all the way through the hole until it rests on the bottom. Slowly turn the cartridge in a clock-wise direction until the tabs align with the slots and the cartridge body drops about ¼' further down. Once the tabs fall through the slots, continue turning firmly in a clock-wise direction until the tabs contact the STOPS. The cartridge is now installed.

Frequency: During the first year, the unit should be inspected quarterly and following all major storm events. Thereafter, the unit should be inspected at least every 6 months. Debris and sediment buildup should be removed as needed in accordance with manufacturer's recommendations. The filter cartridges shall be replaced on an annual basis. Cartridges can be sourced from Fabco Industries, Inc., phone 631-393-6024, 66 Central Avenue Farmingdale, NY 11735.

## C. RECORD KEEPING

Records of all inspections and maintenance work accomplished must be kept and maintained to document filter operation and related site maintenance. These records should be filed and retained for a minimum 5-year time span. The filing system should be capable of ready retrieval of data for periodic reviews by City staff associated with the City's stormwater program. Copies of such records should also be filed with the City's Stormwater Program Coordinator. A Typical inspection and maintenance record form is attached hereto as Attachment B.

**D. CONTRACT SERVICES**

In some instances or at specific times, the owner may not have the ability to conduct the required inspection and/or maintenance programs as outlined in this document. In such case, the work should be accomplished on a contractual basis with a firm or organization that has the staff and equipment to accomplish the required work.

The service contract for inspection and maintenance should be formal, well-written legal document which clearly defines the services to be provided, the contractual conditions that will apply, and detailed payment schedules. Liability insurance should be required in all contracts.

**ATTACHMENT A**

**Sample Inspection Logs**

**185 FORE STREET MIXED-USE COMPLEX  
 EAST INDIA LAND COMPANY, LLC  
 PORTLAND, ME**

<b>ROOF DRAIN FILTER                  ANNUAL INSPECTION &amp; MAINTENANCE LOG</b>			
<b>FACILITY:</b>		<b>YEAR:</b>	
<b>LOCATION: 185 Fore Street</b>		<b>CONTRACTOR:</b>	
<b>FUNCTION:</b>		<b>INSPECTOR:</b>	
<b>DATE OF INSPECTION:</b>			
<b>ITEM IDENTIFICATION</b>	<b>DESCRIPTION OF CONDITIONS</b>	<b>MAINTENANCE ACCOMPLISHED</b>	<b>DATE OF MAINTENANCE</b>
<b>GENERAL COMMENTS:</b>			

**ATTACHMENT B**

**Summary Checklist  
Inspection and Maintenance**



**Stormwater Management System  
Maintenance Program  
Summary Checklist**

Item	Commentary	Frequency				
		Monthly	Quarterly	Semi-Annual	Annual	Long Term
Roof Drain Filters	Inspect systems to verify adequate functioning and capacity. Dispose of filters that have reached useful life in accordance with manufacturer's recommendations. Replace filters as required.		X			
Litter	Litter should be removed daily.					

## 6. UTILITIES

The following information is made in accordance with the City of Portland Code of Ordinances Chapter 14 Land Use, Section 14-527(g)(7).

### 6.1 OVERVIEW

The proposed project will involve installation of new utility services to the building. All new utility services will be provided from the franchise utilities available within India Street. The proposed locations of the new utility services are shown on the Utility Plan (Sheet C-5.0 of the plan set).

### 6.2 WATER SUPPLY

The proposed project will receive its water supply from the Portland Water District's public water supply system. Separate 4" fire and 2" domestic services will be installed to the building from the Portland Water District's existing 8" main in India Street. The District has provided a letter confirming their ability to provide water supply to the proposed development.

#### 6.1.1 Total Project Water Usage

The total average daily water demand for the proposed project was estimated using commonly accepted flow per unit rates. These values are as follows:

Retail Use – 20 Employees at 15 gpd/employee =	300 gpd
Seven (7) – 2 Bedroom Residential Units at 180 gpd/unit =	1,260 gpd
One (1) – 3 Bedroom Residential Unit at 270 gpd/unit =	270 gpd
8 Parking Spaces at 1 gpd/space =	8 gpd
Total	1,838 gpd

### 6.3 WASTEWATER DISPOSAL

The proposed project will be connected to the Portland Water District's and City of Portland's wastewater collection and conveyance systems. The City of Portland Wastewater Capacity Application has been completed and forwarded to Mr. Frank Brancely.

The overall project is anticipated to generate an average daily flow of approximately 1,838 gpd. Based on the existing sewer systems in the area, there appears to be adequate capacity to handle these projected flow amounts.

### 6.4 NATURAL GAS SUPPLY

FST has contacted Unitil regarding their ability to provide service to the project site. Gas service will be installed on the west side of the building from Unitil's existing 6" gas main in India Street.

## **6.5 ELECTRICITY SUPPLY**

FST has contacted Central Maine Power (CMP) regarding their ability to provide service to the development site. CMP currently maintains overhead and underground utilities in the area. The proposed building will be served by a new underground feed from a new riser pole, which will replace an existing pole on the north side of India Street.

## **6.6 ATTACHMENTS**

Attachment H – Correspondence with Utilities

**ATTACHMENT H**

**Correspondence with Utilities**



March 11, 2014

Mr. Rico Spugnardi, Means Coordinator  
Portland Water District  
225 Douglass Street  
P.O. Box 3553  
Portland, Maine 04104-3553

**Subject: Proposed Mixed-Use Development  
25 India Street  
Water Supply and Ability to Serve**

Dear Rico:

Our office is working as a consultant to Archetype, P.A. and Bateman Partners LLC in the site planning and permitting associated with a proposed mixed-use building to be constructed at 25 India Street (northerly corner of India Street and Fore Street intersection). The project site is located on Map 20-F-23 according to the City of Portland Tax Assessor's Maps. On behalf of the developer, we are requesting a letter affirming that the proposed project can be served by the municipal wastewater treatment system.

The project will consist of a four story building with a footprint area of 5,457 s.f. The ground floor will be retail space with an estimated maximum employee count of 20. The second, third and fourth floors will be residential containing a total of six (6) units. The residential units will be a split of two bedroom and three bedroom units.

The projected water use using the Maine State Plumbing Code and typical City of Portland flows information is as follows:

Use	Design Flow
Retail Use 20 employees at 15 gpd/employee	300 GPD
3 two bedroom units at 180 gpd/unit	540 GPD
3-three bedroom units at 270 gpd/unit	810 GPD
6 parking spaces at 1 gpd/space =	6 GPD
<b>Total Water Usage Required</b>	<b>1,656 GPD</b>

Based on this modest amount of flow, we trust that the existing water supply system has adequate capacity to serve this project. We are in the process of completing the Site Plan Application for a submission to the City Planning Staff and we are seeking to provide documentation indicating the District's ability to provide water supply service to this project.

Mr. Frank Brancely  
March 11, 2014  
Page 2

The proposed building will have a fire protection sprinkler system; however, at this time, the size and flow requirements of the sprinkler system have not yet been determined. As the building and site design effort progresses, our office will meet with you to provide detailed information for the new water services and connections proposed for this project.

If you have any questions concerning this request, please contact me.

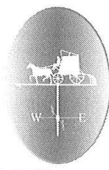
Sincerely,

FAY, SPOFFORD & THORNDIKE

A handwritten signature in black ink, appearing to read 'JAL', with a long horizontal stroke extending to the right.

Joseph A. Laverriere, P.E.  
Sr. Principal Engineer

JAL/cmd



## Portland Water District

FROM SEBAGO LAKE TO CASCO BAY

March 18, 2014

Fay, Spofford & Thorndike  
778 Main Street, Suite 8  
South Portland, ME 04106

Attn: Joseph A. Laverriere, P.E.  
Re: Proposed Mixed-Use Development; 25 India Street, Portland  
Ability to Serve with PWD Water

Dear Mr. Laverriere:

The Portland Water District has received your request for an Ability to Serve determination for the noted site submitted on March 11, 2014. Based on the information provided, we can confirm that the District will be able to serve the proposed project as further described in this letter.

Please note that this letter does not constitute approval of this project from the District. Please review this letter for any special conditions specified by the District and to determine the appropriate next steps to take to move your project through the submittal and approval process.

### Existing Site Service

According to District records, the project site does not currently have existing water service.

### Water System Characteristics

According to District records, there is an 8-inch diameter ductile iron water main on the west side of India Street and a public fire hydrant located across the street from the site.

The current data from the nearest hydrant with flow test information is as follows:

Hydrant Location: Northwest corner of Fore and India Streets  
Hydrant Number: POD-HYD00228 (replaced by POD-HYD11903)  
Last Tested: 7/6/1990  
Static Pressure: 86 psi  
Residual Pressure: Not Measured  
Flow: 1,403 GPM

### Public Fire Protection

It is not anticipated that this project will include the installation of new public hydrants to be accepted into the District water system. The decision to require new hydrants and to determine their locations is solely that of the local fire department. It is your responsibility to contact the Portland Fire Department to ensure that this project is adequately served by existing and/or proposed hydrants.



### Domestic Water Needs

The ability to serve request indicated that the projected water use will be 1,656 gallons per day. The data noted above indicates there should be adequate pressure and volume of water to serve the domestic water needs of the proposed mixed-use building. Based on the high water pressure in this area, we recommend that you consider the installation of pressure reducing devices that comply with state plumbing codes.

### Private Fire Protection Water Needs


You have indicated that this project will require water service to provide private fire protection to the site. Please note that the District does not guarantee any quantity of water or pressure through a fire protection service. Please share these results with your sprinkler system designer so that they can design the fire protection system to best fit the noted conditions. If the data is out of date or insufficient for their needs, please contact the MEANS Division to request a hydrant flow test and we will work with you to get more complete data.

### Conditions of Service

The District can confirm that the existing water system has the capacity to serve the proposed mixed-use building. New water service(s) may be installed from the water main in either India Street or Fore Street. Please note that only one meter and one bill will be associated to each domestic service line. This one master meter must be located in a common space that all tenants could gain access to if necessary.

As design plans become available please send a copy to MEANS for review and we will work with you to ensure that the design meets our current standards. If the District can be of further assistance in this matter, please let us know.

Sincerely,  
Portland Water District

  
Glissen Havu, E.I.  
Design Engineer





**Ocean Gateway Parking**

**Portland**

**PORTLAND WATER DISTRICT**  
 225 Douglass Street  
 Portland, ME 04104

Scale: As Noted

Drawn By: GJH

Prepared For: FST Inc.

Date: February 28, 2014

Disclaimer: This map is suitable for preliminary study and analysis and is based on PWD record information. PWD is not liable for any damages whatsoever resulting from inaccurate data or from errors made in the location and marking of its infrastructure.

Scale 0 15 30 60 90 120 Feet

1 inch = 60 feet

- Legend**
- Air Valve
  - Blow Off
  - By Pass
  - Distribution
  - Transmission
  - Connection
  - Attribute Change
  - Reducer
  - Hydrant
  - Transmission
  - Combined Service
  - Domestic Service
  - Fire Service
  - Private Hydrants
  - Meter Pits
  - Manhole
  - CSO
  - Gravity
  - Force



March 11, 2014

Mr. Frank Brancely  
City of Portland  
Department of Public Services  
55 Portland Street  
Portland, Maine 04101-2991

**Subject: Proposed Mixed-Use Development  
25 India Street  
Wastewater Capacity Application**

Dear Mr. Brancely:

Our office is working as a consultant to Archetype, P.A. and Bateman Partners LLC in the site planning and permitting associated with a proposed mixed-use building to be constructed at 25 India Street (northerly corner of India Street and Fore Street intersection). The project site is located on Map 20-F-23 according to the City of Portland Tax Assessor's Maps. On behalf of the developer, we are requesting a letter affirming that the proposed project can be served by the municipal wastewater treatment system.

The project will consist of a four story building with a footprint area of 5,457 s.f. The ground floor will be retail space with an estimated maximum employee count of 20. The second, third and fourth floors will be residential containing a total of six (6) units. The residential units will be a split of two bedroom and three bedroom units.

The projected water use using the Maine State Plumbing Code and typical City of Portland flows information is as follows:

Use	Design Flow
Retail Use 20 employees at 15 gpd/employee	300 GPD
3 two bedroom units at 180 gpd/unit	540 GPD
3-three bedroom units at 270 gpd/unit	810 GPD
6 parking spaces at 1 gpd/space =	6 GPD
<b>Total Water Usage Required:</b>	<b>1,656 GPD</b>

Based on this modest amount of flow, we trust that the existing wastewater collection and treatment system has adequate capacity to serve this project. We are in the process of completing the Site Plan Application for a submission to the City Planning Staff and would appreciate your response to the Planning Department.

FAY, SPOFFORD & THORNDIKE

Mr. Frank Brancely  
March 11, 2014  
Page 2

If you have any questions concerning this request, please contact me.

Sincerely,

FAY, SPOFFORD & THORNDIKE

A handwritten signature in black ink, appearing to read 'JAL', with a horizontal line extending to the right.

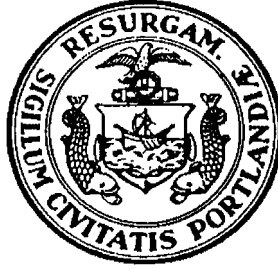
Joseph A. Laverriere, P.E.  
Senior Principal Engineer

JAL/cmd



# CITY OF PORTLAND WASTEWATER CAPACITY APPLICATION

Department of Public Services,  
55 Portland Street,  
Portland, Maine 04101-2991



Mr. Frank J. Brancely,  
Senior Engineering Technician,  
Phone #: (207) 874-8832,  
Fax #: (207) 874-8852,  
E-mail: fjb@portlandmaine.gov

Date: 3-11-14

## 1. Please, Submit Utility, Site, and Locus Plans.

Site Address: 185 Fore Street (formerly 25 India Street) Chart Block Lot Number: 20-F-23

Proposed Use: Mixed (Retail and Residential)

Previous Use: N/A

Existing Sanitary Flows: N/A GPD

Existing Process Flows: N/A GPD

Description and location of City sewer that is to receive the proposed building sewer lateral.  
Existing 18" gravity sewer main within India Street

Site Category	Commercial (see part 4 below)	<input type="checkbox"/>
	Industrial (complete part 5 below)	<input type="checkbox"/>
	Governmental	<input type="checkbox"/>
	Residential	<input checked="" type="checkbox"/>
	Other (specify) Retail	<input checked="" type="checkbox"/>

**(Clearly, indicate the proposed connections, on the submitted plans)**

## 2. Please, Submit Contact Information.

City Planner's Name: Bill Needelman Phone: 207-874-8722

Owner/Developer Name: Bateman Partners, LLC, Attn: Nathan Bateman

Owner/Developer Address: P.O. Box 3572, Portland, ME 04104

Phone: 207-772-2992 Fax: 207-772-1881 E-mail: nathan@batemanpartnersllc.com

Engineering Consultant Name: Fay, Spofford & Thorndike, Attn: Joe Laverriere, P.E.

Engineering Consultant Address: 778 Main Street, Suite 8, South Portland, ME 04106

Phone: 207-775-1121 Fax: 207-879-0896 E-mail: jlaverriere@fstinc.com

**(Note: Consultants and Developers should allow +/- 15 days, for capacity status, prior to Planning Board Review)**

## 3. Please, Submit Domestic Wastewater Design Flow Calculations.

Estimated Domestic Wastewater Flow Generated: 1,656 GPD

Peaking Factor/ Peak Times: x6

Specify the source of design guidelines: (i.e.  "Handbook of Subsurface Wastewater Disposal in Maine,"  "Plumbers and Pipe Fitters Calculation Manual,"  Portland Water District Records,  Other (specify) \_\_\_\_\_)

**(Note: Please submit calculations showing the derivation of your design flows, either on the following page, in the space provided, or attached, as a separate sheet)**

**4. Please, Submit External Grease Interceptor Calculations.**

Total Drainage Fixture Unit (DFU) Values: N/A

Size of External Grease Interceptor: \_\_\_\_\_

Retention Time: \_\_\_\_\_

Peaking Factor/ Peak Times: \_\_\_\_\_

*(Note: In determining your restaurant process water flows, and the size of your external grease interceptor, please use The Uniform Plumbing Code. Note: In determining the retention time, sixty (60) minutes is the minimum retention time. Note: Please submit detailed calculations showing the derivation of your restaurant process water design flows, and please submit detailed calculations showing the derivation of the size of your external grease interceptor, either in the space provided below, or attached, as a separate sheet)*

**5. Please, Submit Industrial Process Wastewater Flow Calculations**

Estimated Industrial Process Wastewater Flows Generated: N/A \_\_\_\_\_ GPD

Do you currently hold Federal or State discharge permits? Yes \_\_\_\_\_ No \_\_\_\_\_

Is the process wastewater termed categorical under CFR 40? Yes \_\_\_\_\_ No \_\_\_\_\_

OSHA Standard Industrial Code (SIC): <http://www.osha.gov/oshstats/sicser.html>

Peaking Factor/Peak Process Times: \_\_\_\_\_

*(Note: On the submitted plans, please show where the building's domestic sanitary sewer laterals, as well as the building's industrial-commercial process wastewater sewer laterals exits the facility. Also, show where these building sewer laterals enter the city's sewer. Finally, show the location of the wet wells, control manholes, or other access points; and, the locations of filters, strainers, or grease traps)*

*(Note: Please submit detailed calculations showing the derivation of your design flows, either in the space provided below, or attached, as a separate sheet)*

---

Notes, Comments or Calculation

## 7. SOLID WASTE

The following information is made in accordance with the City of Portland Code of Ordinances Chapter 14 Land Use, Section 14-527(g)(8).

### 7.1 OVERVIEW

This section of the application provides the estimates of solid waste generation, considers the reductions of the waste through the use of recycling, provides information on waste projections during construction of the development, and outlines the planned procedures for the transport and disposal of solid wastes that will be generated by the operation of the proposed development.

The following volumes of solid waste associated with the construction and operation of the development have been estimated:

- 28 cubic yards of construction debris related to the new building construction activities (excluding volume of recycled materials).
- 588 pounds per week of solid waste will be generated by the operations of the development<sup>1</sup>. Assuming that 50% of the waste is recycled, it is estimated that the project will generate 7.5 tons of recyclable waste and 7.5 tons of non-recyclable waste per year.

### 7.2 SOLID WASTE GENERATED DURING THE CONSTRUCTION OF THE PROPOSED BUILDING

The contract provisions and the wastes generation estimates for the proposed buildings will be as follows:

- The construction contract will provide a goal for recycling of solid waste of 80%.
- The construction contract will require a plan for recycling and the location of recycling facilities to be identified prior to any solid wastes removal from the site.
- Construction Debris and Waste – 28 c.y. after recycling.

Unless otherwise directed by the City, the waste stream will be transported and disposed of at the following locations:

Hazardous Materials:	WMI Crossroads Facility in Norridgewock, Maine
Mixed Construction Material:	Riverside Recycling Facility in Portland, Maine; WMI Crossroads Facility in Norridgewock, Maine or Juniper Ridge in Old Town, Maine (Contractor option)
Separated Wood Construction Debris:	KTI Biofuels in Lewiston, Maine

---

<sup>1</sup> Based on Table 14-1 of the CEQR Technical Manual, January 2012 Edition; Source: New York City Department of Sanitation.

Separated Metal/Ferrous Material:

One Steel Recycling Inc. in Arundel or Oakland,  
Maine

The collection, transfer, disposal, and payment of all fees for solid wastes shall be the responsibility of the Contractor, with all waste transferred by a licensed non-hazardous waste transporter.

### **7.3 SOLID WASTE GENERATED FROM THE OPERATION OF THE DEVELOPMENT**

The waste from the residential and commercial uses will be picked up through a contract with a licensed solid waste transporter.

### **7.4 FLUORESCENT LIGHTS AND FIXTURES**

The developer may use fluorescent light bulbs that do not have PCB ballasts. The electrical switches for the project will be specified to not contain mercury. Fluorescent bulbs and other universal wastes will be taken to Riverside Recycling Facility in Portland.

### **7.5 HAZARDOUS AND SPECIAL WASTES**

The developer anticipates use of cleaners, solvents, etc. will be within normal household thresholds thus requiring no special measures for storage or use.

### **7.6 GRIT/SEDIMENT REMOVAL**

There are no proposed catch basins on the project site. The proposed roof drain filter will be maintained in accordance with the Stormwater Operations and Maintenance Manual provided. No significant grit or sediment is expected to be generated by the project.

### **7.7 ATTACHMENTS**

Attachment I – Computations of Types and Volumes of Solid Wastes for Construction Project

**ATTACHMENT I**

**Computations of Types of Volumes of Solid Wastes  
for Construction Project**



## SOLID WASTES COMPUTATIONS AND DISPOSAL

### **A. NEW BUILDING CONSTRUCTION:**

Basis of Estimate: 10 c.y./1,500 s.f. of finished space

Area: Approximately 21,000± square feet

Solid Waste: Approximately 140 c.y.

Other Wastes Associated with Other Site Construction: Cardboard from packaging etc.: Quantity should be limited. Construction documents will require a recycling program. All other to be placed in a separate dumpster on the site paid for and designated for Contractor.

Set a goal in the construction documents to require segregation of cardboard and paper with a goal of 80%; segregation of metals with a goal of 85%.

Total: 140 c.y. before recycling

Net: 28 c.y. if 80% of the material is recycled

Require Contractor to: Provide multiple 30 c.y. dumpsters. Haul to facilities identified in Section 7.2 with shipping manifest. The Contractor should identify recycling methods and sites prior to construction.

#### Disposition:

Assume 10 percent is concrete which can be sent to the approved aggregate recycling facilities operated by Shaw Bros. or R.J. Grondin and Sons for processing into recycled aggregate.

Of the remaining 90 percent, assume 70 percent is wood or metal which can be transported to KTI Biofuels in Lewiston (for wood) or One Steel Recycling in Oakland, Maine for metals.

This will leave about 38 cubic yards of mixed construction debris that should be hauled to the Riverside Recycling Facility in Portland, WMI Crossroads facility in Norridgewock, Maine or the Juniper Ridge Facility in Old Town, Maine.

Require Contractor to: Provide dumpsters designated by material type. The contractor should identify recycling methods and sites prior to construction.

All haulers must have a current non-hazardous waste haul license. The Contractor shall provide the names of the haulers 10 days prior to removal of any demolition debris or construction debris from the site.

## **B. OPERATIONAL SOLID WASTE:**

### **RESIDENTIAL USE:**

Basis of Estimate: 41 pounds/wk per residential household  
From Table 14-1 of the CEQR Technical Manual from January 2014 Edition; Source: New York City Department of Sanitation.

Number of units: 8

Solid Waste: Approximately 328 pounds/week

### **COMMERCIAL USE:**

Basis of Estimate: 13 pounds/wk per office employee  
From Table 14-1 of the CEQR Technical Manual from January 2014 Edition; Source: New York City Department of Sanitation.

Number of Employees: Approximately 20 employees

Solid Waste: Approximately 260 pounds/week

## **8. FIRE SAFETY**

### **8.1 OVERVIEW**

FST has completed the Fire Department checklist and performed ongoing coordination with Fire Department representatives and City Planning officials. The accompanying memorandum outlines our findings with respect to compliance with the City's Public Safety standards as set forth in the City's Technical Manual Section 3 – Public Safety Standards.

Generally, the site access conditions will include two sided building access from Fore Street and India Street. A fire hydrant is located directly across India Street from the project site, and the proposed building will be fully sprinkled and code compliant to current standards.

Additional fire safety review and building related fire code evaluation and compliance evidence will be provided as part of the building permit process.

### **8.2 ATTACHMENTS**

Attachment J – Portland Fire Department Site Review Checklist & NFPA 1 Review

**ATTACHMENT J**

**Portland Fire Department Site Review Checklist & NFPA 1 Review**



May 5, 2014

Captain Chris Pirone  
City of Portland Fire Department  
380 Congress Street  
Portland, ME 04101

**Subject: 185 Fore Street  
Fire Department Site Review Checklist**

Dear Captain Pirone:

In accordance with instructions in the City's Site Plan Review packet, please find enclosed the drawing necessary for your review of the proposed 185 Fore Street project in Portland. As part of the building design, the architect has retained a third party Fire Protection Engineer to review NFPA 101. We have listed each item in your checklist below, followed by our response.

1. *Name, address, telephone number of applicant.*

Bateman Partners, LLC  
Attn: Nathan Bateman  
P.O. Box 3572  
Portland, ME 04104  
207-772-2992

2. *Name, address, telephone number of architect.*

Project Architect: Archetype PA  
48 Union Wharf  
Portland, ME 04101  
Attn: David Lloyd  
207-772-6022

3. *Proposed uses of any structures (NFPA and IBC classification).*

Refer to the attached Code Analysis for the building as provided by Archetype PA.

4. *Square footage of all structures (total and per story).*

Building Footprint Area	=	5,372 SF
Four Story Building w/Mezzanine		
Total Building Area	=	22,275 SF

Captain Chris Pirone  
May 5, 2014  
Page 2

5. *Elevation of all structures.*

The building height is 60'-6". Architectural building elevations accompany this letter and they show the various locations of door openings, etc. around the building perimeter.

6. *Proposed fire protection of all structures.*

The building will have a sprinkler system with additional protection per code. Fire flows and requirements for system storage or booster pumping are subject to the fire system design which will be performed prior to the request for a building permit.

7. *Hydrant locations.*

A fire hydrant is currently located on India Street opposite the project site (< 75' from building).

8. *Water main(s) size and location.*

The site will be served by a 4" sprinkler service to be extended into the building off an existing 8" main along India Street. A 2" domestic service will also be extended to the building. The building is expected to have internal sprinkler risers and a Siamese fire pump connection on the India Street side of the building.

9. *Access to all structures (min. 2 sides).*

The accompanying site plan depicts the site access conditions along India and Fore Streets.

10. *A code summary shall be included referencing NFPA 1 and all fire department technical standards.*

**NFPA 1 – Chapter 18 Fire Department Access and Water Supply**

18.2 Fire Department Access:

The project site is located in a densely developed area and is fronted by a public street. The following street widths are currently available:

<b><u>Street</u></b>	<b><u>Width</u></b>
India Street	40 FT
Fore Street	35 FT

Per NFPA 1 – Chapter 18.2.3.3.1, there will be public street access within 50 ft. of at least one exterior door. Per NFPA 1 – Chapter 18.2.3.2.2.1, all first story floors shall be located not more than 450 ft. from a Fire Department access road.

Captain Chris Pirone  
May 5, 2014  
Page 3

**City of Portland Technical Manual – Section 3 Public Safety**

*3.4.1 Every dead-end roadway more than one hundred fifty (150') feet in length shall provide a turnaround at the closed end. Turnarounds shall be designed to facilitate future street connectivity and shall always be designed to the right (refer to Figure I-5).*

Supporting Evidence: Not applicable

*3.4.2 Where possible, developments shall provide access for Fire Department vehicles to at least two sides of all structures. Access may be from streets, access roads, emergency access lanes, or parking areas.*

Supporting Evidence: As depicted on the site plan, the proposed building layout provides for minimum two sided access to the structure.

*3.4.3 Building setbacks, where required by zoning, shall be adequate to allow for emergency vehicle access and related emergency response activities and shall be evaluated based on the following factors:*

- *Building Height.*
- *Building Occupancy.*
- *Construction Type.*
- *Impediments to the Structures.*
- *Safety Features Provided.*

Supporting Evidence: The proposed development layout has contemplated emergency access conditions and provides for safe and efficient access along the public street for emergency vehicles.

*3.4.4. Fire Dept. access roads shall extend to within 50' of an exterior door providing access to the interior of the structure.*

Supporting Evidence: The building will be provided with an exterior doors that will be within 50' of a Fire Department access route, namely India Street and Fore Street.

*3.4.5. Site access shall provide a minimum of nine (9) feet clearance height to accommodate ambulance access.*

Supporting Evidence: A minimum of 9 ft. vertical clearance will be provided below any overhead signage or utilities entering the site.

*3.4.6. Elevators shall be sized to accommodate an 80 x 24 inch stretcher.*

Supporting Evidence: The elevators will be supplied to meet this requirement.

Captain Chris Pirone  
May 5, 2014  
Page 4

*3.4.7. All structures are required to display the assigned street number. Numbers shall be clearly visible from the public right of way.*

Supporting Evidence: The applicant will work with the City's Public Services Division to assign street addresses and numbering to meet City Standards.

If you need any further information, please contact our office.

Sincerely,

FAY, SPOFFORD & THORNDIKE



Joseph A. Laverriere, P.E.  
Senior Principal Engineer

JAL/smk

Attachments: Sheet C-3.0 Site Plan  
Building Elevations and Floor Plans  
Code Analysis

c: Nathan Bateman – Bateman Partners, LLC



## 9. CONFORMITY WITH APPLICABLE DESIGN STANDARDS

The following statement is made in accordance with the City of Portland Code of Ordinances, Chapter 14 Land Use, Article V Section 14-526.

### 9.1 OVERVIEW

This project conforms with all the applicable design standards of Section 14-526 as demonstrated in the following narrative.

#### (a) Transportation Standards

##### 1. Impact on Surrounding Street Systems:

The development will fit in with the existing street system and does not require vehicular access points to the adjacent roadway system. Based on the number of residential units the project is expected to have an insignificant impact on traffic in the neighborhood.

##### 2. Access and Circulation:

###### 2.1 Site Access and Circulation.

- (i) Pedestrian access is provided via the sidewalks along India and Fore Streets. Door controlled access will be provided at each of the building entry locations. The applicant has secured adequate off-street parking within the Ocean Gateway Garage via a leased parking agreement. In addition, there is existing on-street public parking within the vicinity of the project along India and Fore Streets.
- (ii) There are no new vehicular access and egress points being constructed as part of this project.
- (iii) The site does not feature drive up services as mentioned in this requirement.
- (iv) Site access has been designed so as not to impede potential future connection to adjacent streets.

###### 2.2 Loading and Servicing.

- (i) Not required. There will be adequate area along adjacent streets for infrequent periods of tenants moving in/out of the building. In addition, there is a shared alley space between the proposed building and the Ocean Gateway Garage that may be used for maintenance service requirements associated with the new building.

###### 2.3 Sidewalks.

- (i) The sidewalks along the project site frontage along India and Fore Street will be expanded and reconstructed with brick. All sidewalk improvements shall conform to the City of Portland Technical Manual as shown on the project design drawings.

- (ii) The sidewalk ramps at the intersection of India and Fore Streets will be reconstructed in accordance with City of Portland Technical Design Standards.
  - (iii) There are no new internal sidewalks.
- 3. Public Transit Access:
  - a. The development will be served by the existing #8 Metro service route that has bus stops along India Street, which is within ¼ mile of the project site. Transit service does not currently traverse Fore Street.
  - b. A new transit stop is not proposed as part of the project.
  - c. A new transit stop is not proposed based on the close proximity of nearby transit stops.
- 4. Parking:
  - a. Location and Required Number of Vehicle Parking Spaces:
    - (i) The applicant is providing off-street parking via a lease parking agreement within the Ocean Gateway Garage. The provided parking exceeds the parking requirements as stipulated in the City's Ordinance for each of the uses contained in the new building.
    - (ii) A TDM is not required for this project.
    - (iii) No new parking is being created as part of this project.
    - (iv) No new parking is being created as part of this project.
    - (v) No new parking is being created as part of this project.
  - b. Location and Required Number of Bicycle Parking Spaces:
    - (i) The project will include interior bicycle storage for each residential unit. Bike racks sufficient to accommodate six (6) bicycles are being provided along the India Street frontage for the non-residential uses within the building.
  - c. Motorcycles and Scooter Parking:
    - (i) The project does not provide designated motorcycle/scooter parking.
  - d. Snow Storage:
    - (i) Due to the proposed site development proposal, in which the majority of the site will be covered by a building with a flat roof, very little snow removal will be required. The alleyway is owned by others and snow removal will likely require snow to be hauled away from the site.

(ii) Not applicable.

5. Transportation Demand Management (TDM):

a. A TDM plan is not required for this project.

**(b) Environmental Quality Standards**

1. Preservation of Significant Natural Features:

a. The existing site retains no prominent significant natural features therefore no issue related to the preservation of these features applies.

b. Not applicable.

c. The applicant will not require a waiver from this standard.

2. Landscaping and Landscaping Preservation:

a. Landscape Preservation.

(i) There are no existing trees on the site; therefore, there is no existing landscaping identified for preservation. There is an existing street tree along India Street that will be removed, and two new street trees with tree grates and tree guards will be installed as part of the development construction. This plan has been developed in coordination with the City Arborist, Jeff Tarling.

(ii) Not applicable.

(iii) Not applicable.

(iv) The applicant will not require a waiver from this standard.

(v) Not applicable.

b. Site Landscaping.

(i) Landscaped Buffers:

(a) There are no visible service or loading areas proposed.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

(ii) Parking Lot Landscaping:

a) Not applicable.

b) Not applicable.

- c) Not applicable.
- d) Not applicable
- e) Not Applicable

(iii) Street Trees

- a) In coordination with City Arborist, Jeff Tarling, the project Landscape Architect, Anthony Muench, RLA, has designed a plan to provide two new street trees along the India Street frontage. Existing underground utilities prevent additional street trees from being installed along the Fore Street frontage.
- b) Not Applicable.

3. Water Quality, Stormwater Management and Erosion Control:

a. Stormwater:

- (i) Runoff from the site will continue to be directed to the City's storm drainage systems in the streets.
  - (ii) All stormwater runoff is proposed to discharge to the City street systems. The project will not adversely impact adjacent lots or the City street system.
  - (iii) All stormwater runoff is proposed to discharge to the City street systems. The project will not adversely impact adjacent lots or the City street system.
  - (iv) All stormwater runoff is proposed to discharge to the City street systems. The project will not adversely impact adjacent lots or the City street system.
- b. A site specific Stormwater Management Plan has been developed for the project, to show compliance with Section 5 of the Technical manual, including the basic, general, and flooding standards of MeDEP Chapter 500. More information on stormwater management is provided in Section 5 of this application.
  - c. The project is not located in a watershed of an urban impaired stream as listed by the MeDEP.
  - d. Not applicable.
  - e. The project is serviced by both a public wastewater system and public drainage system. The project will not pose a risk of groundwater contamination.
  - f. The project will be connected to the public sanitary sewer system which is adequately sized for the project flows.

**(c) Public Infrastructure and Community Safety Standards.**

1. Consistency with City Master Plans:
  - a. The project has been designed to be consistent with the City's Zoning Ordinance and off-site infrastructure.
  - b. Not applicable.
2. Public Safety and Fire Prevention:
  - a. The site has been designed to promote safe and inviting public and residential access.
  - b. No changes to emergency access conditions within the surrounding streets is proposed.
  - c. Fire hydrants are located within the adjacent street system. The new buildings will be fully sprinklered.
3. Availability and Adequate Capacity of Public Utilities:
  - a. The applicant has secured letters from all applicable utilities stating their ability to serve this project.
  - b. All onsite electrical lines will be underground.
  - c. All new utility infrastructures will meet the provisions of the Technical Manual.
  - d. The project will be served by connection to the public sewer system within India Street.
  - e. The sanitary sewer collection system meets all applicable sections of the Technical Manual. The stormwater management system is designed to meet the standards of Chapter 500.
  - f. The proposed building includes provisions for internal storage of trash and recyclables temporarily until a contracted waste management company can pick up and dispose of the solid waste.

**(d) Site Design Standards.**

1. Massing, Ventilation and Wind Impact:
  - a. The bulk, location and height of the proposed building will not result in adverse impacts to abutting properties.
  - b. The bulk, location and height of the proposed building will not substantially reduce the value or utility of adjacent structures.
  - c. HVAC venting is proposed to be directed to the building roof and directed away from public spaces.

2. Shadows:
  - a. Not applicable.
3. Snow and Ice Loading:
  - a. The proposed building will have flat roofs; therefore, accumulated snow and ice will not fall onto adjacent properties or public ways.
4. View Corridors:
  - a. The project site is located outside the Downtown Vision View Corridor Protection Plan.
5. Historic Resources:
  - a. The development is not located in a historic district, historic landscape district or City designated landmark.
  - b. The development is not located adjacent to or within 100 ft. of a designated landmark, historic district, or historic landscape district.
  - c. There are no known archaeological resources on the site.
6. Exterior Lighting:
  - a. Site Lighting.
    - (i) Exterior lighting has been designed to meet the requirements of Section 12 of the Technical Manual. Proposed lighting is shown on the Site Electrical Plan (Sheet E1.01).
  - b. Architectural and Specialty Lighting:
    - (i) No architectural or specialty lighting is proposed.
    - (ii) No up-lighting is proposed.
  - c. Street Lighting
    - (i) One existing street light will be relocated and one new street light will be installed on the India Street Frontage.
7. Noise and Vibration:

The project noise levels will be designed to meet the permitted levels as outlined in the B-5b Zone.

8. Signage and Wayfinding:

a. All street and wayfinding signage shall meet the requirements of the Manual on Uniform Traffic Devices (MUTCD) and Division 22 of the City Code.

(i) The project is not located in a historic district or subject to Article IX.

(ii) Not applicable.

(iii) All street and wayfinding signage shall meet the requirements of the Manual on Uniform Traffic Devices (MUTCD) and Division 22 of the City Code.

9. Zoning Related Design Standards:

a. The project is designed to be a high density, mixed-use development with multiple story building.

## **10. VERIFICATION OF PROPOSED HVAC EQUIPMENT**

### **10.1 OVERVIEW**

The following manufacturer cut sheets verify that all proposed HVAC and manufacturing equipment meets applicable state and federal emissions requirements.

### **10.2 ATTACHMENTS**

Attachment K – HVAC Equipment Cut Sheets



**ATTACHMENT K**

**HVAC Equipment Cut Sheets**

**SUBMITTAL DATA: PEAD-A36AA4 & PUZ-HA36NHA2 . . . 36,000 BTU/H HORIZONTAL-DUCTED HYPER HEAT-PUMP SYSTEM**

Job Name:	Location:	Date:
Purchaser:	Engineer:	
Submitted to:	For <input type="checkbox"/> Reference <input type="checkbox"/> Approval <input type="checkbox"/> Construction	
System Designation:	Schedule No.:	

**GENERAL FEATURES**

- Innovative flash technology enables high heating capacity at lower outside temperatures
- Exhibits 100% of rated heating capacity at 5°F; 90% of rated heating capacity at -4°F
- Horizontal-ducted indoor unit features medium static pressure capability and a thin 9-7/8" high body
- Built-in drain mechanism for condensate removal; lifts to 27-9/16"
- Air filter is included with indoor unit
- Self-check function—integrated diagnostics
- Knockout for ventilation air
- Limited warranty: five years on parts and defects and seven years on compressors

**OPTIONAL ACCESSORIES**
**Outdoor Unit**

- Outdoor Unit
- M-NET Adapter (PAC-SF81MA-E)
- Air Outlet Guide (PAC-SG59SG-E; two pieces required)
- Wind Baffle (WB-PA2; two pieces required)

**Controller Options**

- Wall-mounted Wired Remote Controller (PAR-21MAA)
- External Heat Adapter (CN24RELAY-KIT-CM3)
- External Heat Adapter CN24 Relay Kit (CN24RELAY-KIT-CM)
- Remote Temperature Sensor (PAC-SE41TS)
- Hand-held Wireless Remote Controller (PAR-FL32MA; req.PAR-FA32MA-E)
- Wireless Signal Receiver Module (PAR-FA32MA-E)

**Cooling\***

Rated Capacity . . . . .	34,000 Btu/h
Minimum Capacity . . . . .	14,000 Btu/h
SEER . . . . .	16.8 Btu/h/W
Total Input . . . . .	2,800 W

**Heating at 47°F\***

Rated Capacity . . . . .	38,000 Btu/h
Minimum Capacity . . . . .	18,000 Btu/h
HSPF (IV) . . . . .	10.4 Btu/h/W
Total Input . . . . .	3,150 W

**Heating at 17°F\***

Rated Capacity . . . . .	27,000 Btu/h
Rated Total Input . . . . .	3,250 W
Maximum Capacity . . . . .	38,000 Btu/h
Maximum COP . . . . .	2.06
Maximum Total Input . . . . .	5,400 W

\* Rating Conditions (Cooling) - Indoor: 80°F (27°C) DB / 67°F (19°C) WB. Outdoor: 95°F (35°C) DB / 75°F (24°C) WB.  
 (Heating) - Indoor: 70°F (21°C) DB / 60°F (16°C) WB. Outdoor: 47°F (8°C) DB / 43°F (6°C) WB.  
 (Heating at 17°F) - Indoor: 70°F (21°C) DB / 60°F (16°C) WB. Outdoor: 17°F (-8°C) DB / 15°F (-9°C) WB.

**Heating at 5°F\***

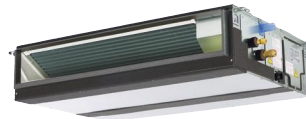
Maximum Capacity . . . . .	38,000 Btu/h
Maximum COP . . . . .	1.82
Maximum Total Input . . . . .	6,100 W

**Electrical Requirements**

Power Supply . . . . . 208 / 230V, 1-Phase, 60 Hz  
 Recommended Fuse/Breaker Size . . . . . 30 A

**Voltage**

Indoor - Outdoor S1-S2 . . . . . AC 208 / 230V  
 Indoor - Outdoor S2-S3 . . . . . DC24V  
 Indoor - Remote Controller . . . . . DC12V



Indoor Unit: PEAD-A36AA4



Outdoor Unit: PUZ-HA36NHA2

**OPERATING CONDITIONS**

		Indoor Intake Air Temp.		Outdoor Intake Air Temp.
Cooling	Maximum	90°F (32°C) DB, 73°F (23°C) WB	115°F (46°C) DB	
	Minimum	66°F (19°C) DB, 59°F (15°C) WB	0°F** (-18°C) DB	
Heating	Maximum	83°F (28°C) DB	70°F (21°C) DB, 59°F (15°C) WB	
	Minimum	63°F (17°C) DB	-13°F (-25°C) DB, -13°F (-25°C) WB	

\*\* With optional wind baffle accessory installed. If not installed, the minimum temperature will be 23°F (-5°C) DB.

**Indoor Unit**

MCA . . . . .	3.30 A
Fan Type x Quantity . . . . .	Sirocco fan x 2
Fan Motor Type . . . . .	Direct-driven DC Brushless Motor
Fan Motor . . . . .	2.64 F.L.A.
Fan Motor Output . . . . .	244 W
Airflow (Lo - Med - Hi) . . . . .	847 - 1,024 - 1,201 Dry CFM
	777 - 953 - 1,130 Wet CFM
Air Filter . . . . .	Polypropylene Honeycomb
External Static Pressure . . . . .	0.14 - 0.20 - 0.28 - 0.40 - 0.60"WG
Sound Pressure Level (Lo - Med - Hi) . . . . .	33 - 38 - 42 dB(A)

**DIMENSIONS**

DIMENSIONS	UNIT INCHES / MM
W	55-1/8 / 1,400
D	28-7/8 / 732
H	9-7/8 / 250

Weight . . . . . 91 lbs. / 41 kg  
 External Finish . . . . . Galvanized-steel Sheet  
 Field Drainpipe Size O.D. . . . . 1-1/4" / 32 mm

**Outdoor Unit**

Compressor . . . . .	DC Inverter-driven Twin Rotary
MCA . . . . .	28 A
MOCF . . . . .	40 A
Fan Motor . . . . .	0.4 + 0.4 F.L.A.
Sound Pressure Level	
Cooling . . . . .	52 dB(A)
Heating . . . . .	53 dB(A)

**DIMENSIONS**

DIMENSIONS	INCHES / MM
W	37-3/8 / 950
D	13 + 1-3/16 / 330 + 30
H	37-1/8 / 943

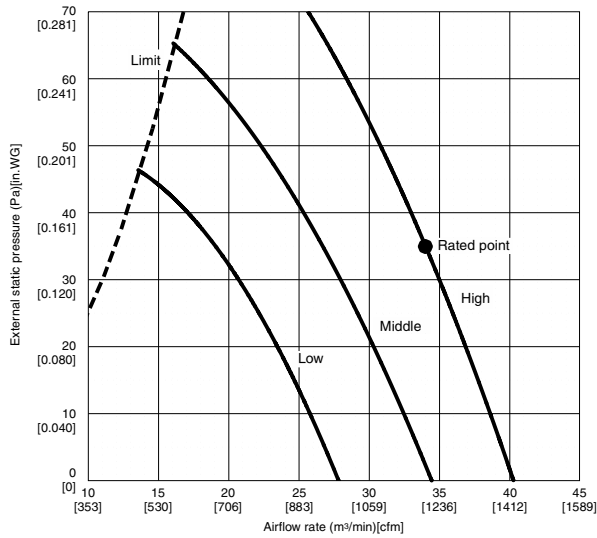
Weight . . . . . 265 lbs. / 170 kg  
 External Finish . . . . . Munsell No. 3Y 7.8 / 1.1  
 Refrigerant Type . . . . . R410A  
 Refrigerant Pipe Size O.D.  
     Gas Side . . . . . 5/8" / 15.88 mm  
     Liquid Side . . . . . 3/8" / 9.52 mm  
 Max. Refrigerant Pipe Length . . . . . 245' / 75 m  
 Max. Refrigerant Pipe Height Difference . . . . . 100' / 30 m  
 Connection Method . . . . . Flared



# INDOOR UNIT PEAD-A36AA4 FAN PERFORMANCE AND AIRFLOW RATES

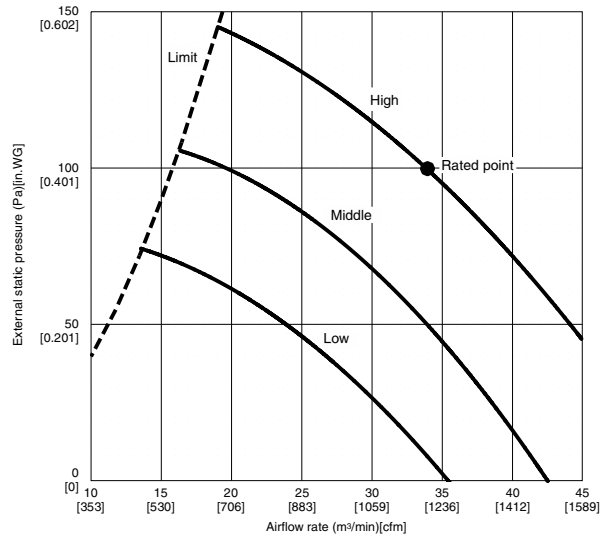
## PEAD-A36AA4

(External static pressure 35Pa [0.14 in. WG]) 208-230V 60Hz



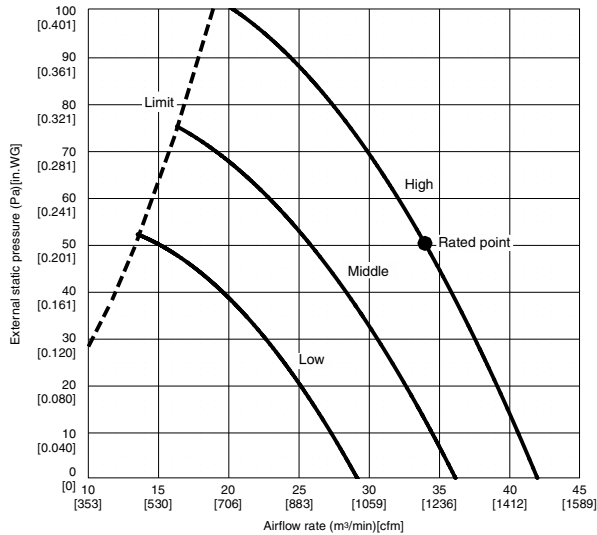
## PEAD-A36AA4

(External static pressure 100Pa [0.4 in. WG]) 208-230V 60Hz



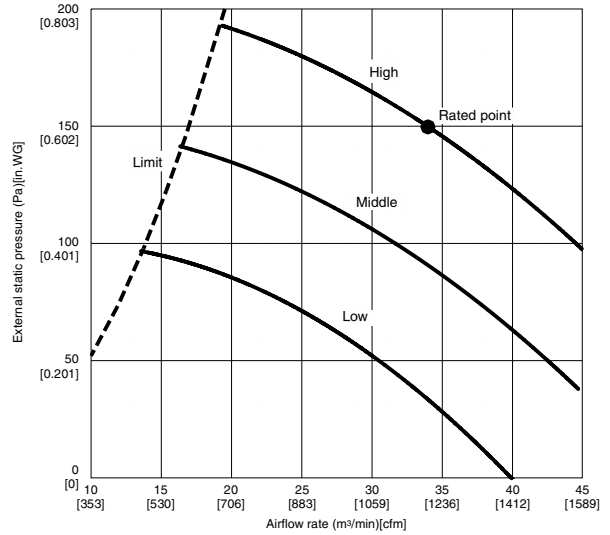
## PEAD-A36AA4

(External static pressure 50Pa [0.2 in. WG]) 208-230V 60Hz



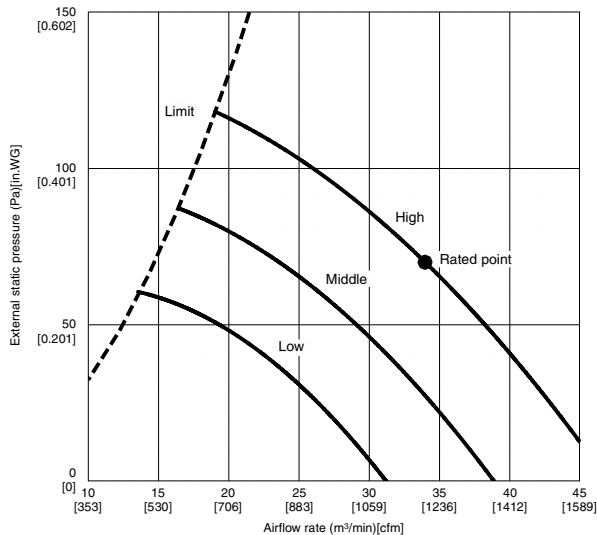
## PEAD-A36AA4

(External static pressure 150Pa [0.6 in. WG]) 208-230V 60Hz



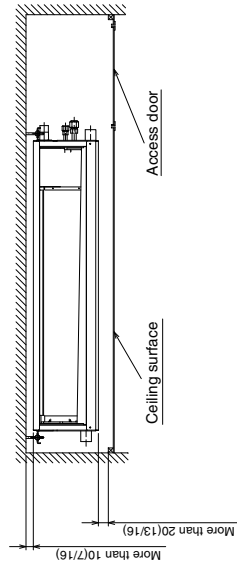
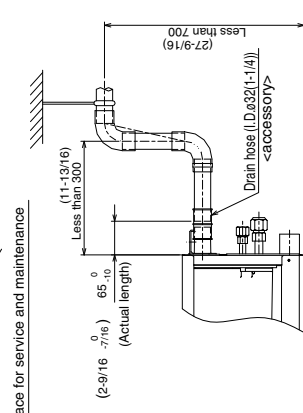
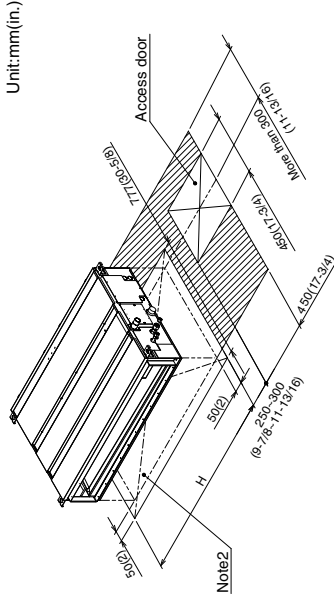
## PEAD-A36AA4

(External static pressure 70Pa [0.3 in. WG]) 208-230V 60Hz

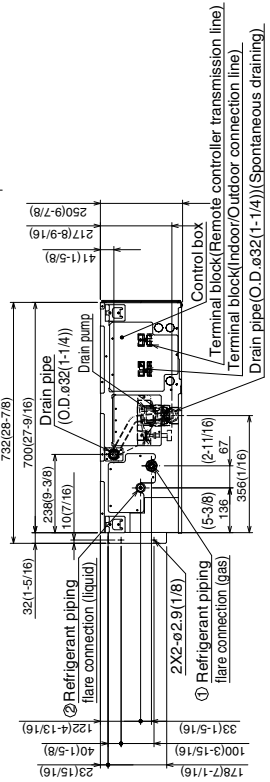
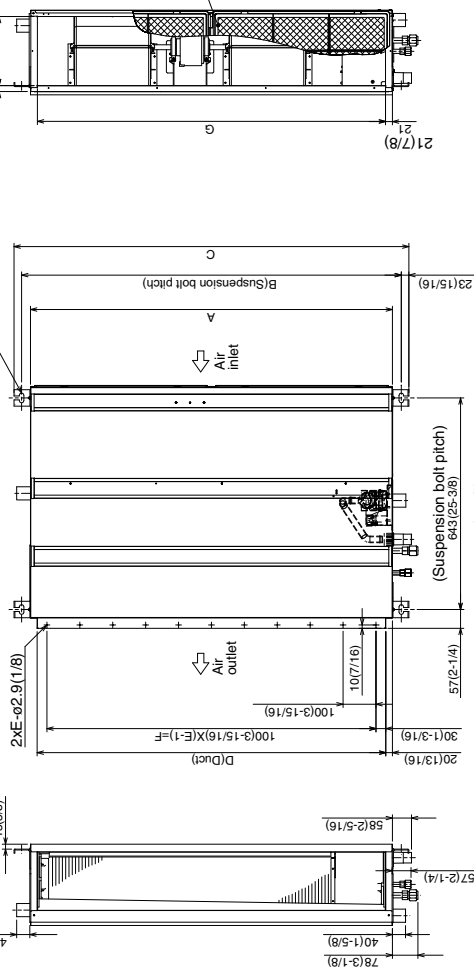
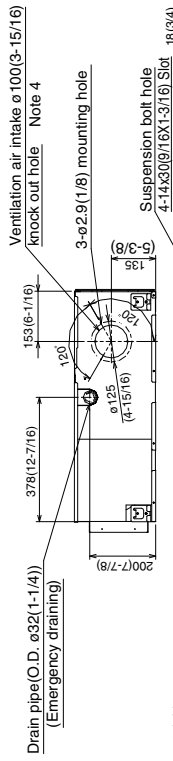
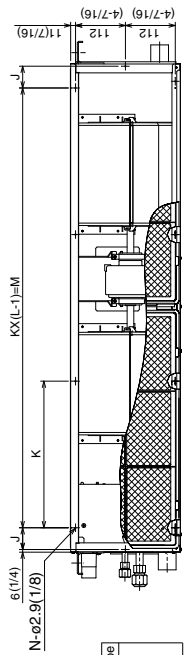


# DIMENSIONS: PEAD-A36AA4

Unit:mm(in.)



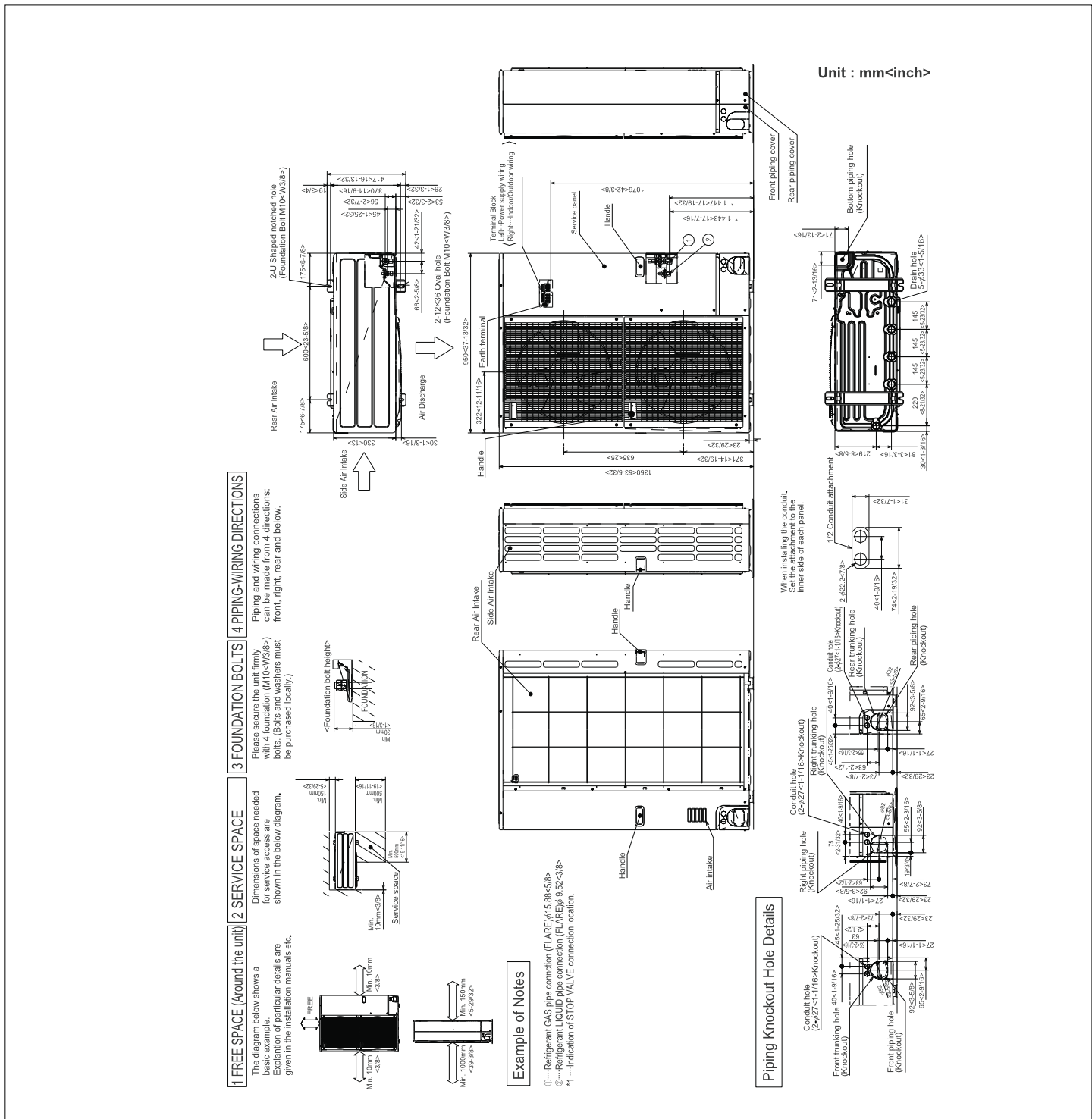
Make the access door at the appointed position properly for service maintenance.



Model	A	B	C	D	E	F	G	H	I	J	K	L	M	N	① Gas pipe	② Liquid pipe
PEAD-A24, 30AA4	1100 (43-5/16)	1154 (45-7/16)	1200 (47-1/4)	1060 (41-3/4)	1100 (43-3/8)	1000 (39-3/8)	1058 (41-11/16)	1200 (47-1/4)	1200 (47-1/4)	49 (1-15/16)	330 (13)	4 (39)	990 (39)	10	φ15.88 (5/8)	φ9.52 (3/8)
PEAD-A36, 42AA4	1400 (55-1/8)	1454 (57-1/4)	1500 (59-1/16)	1360 (53-1/16)	1400 (55-1/8)	1300 (51-3/16)	1358 (53-1/2)	1500 (59-1/16)	1500 (59-1/16)	54 (2-3/16)	320 (12-5/8)	5 (50-7/16)	1280 (50-7/16)	12		

- NOTE 1. Use M10 screw for the Suspension bolt (field supply).  
 2. Keep the service space for the maintenance at the bottom.  
 3. This chart indicates for PEAD-A24-30-36-42AA4 models, which have 2 fans.  
 4. In case of the inlet duct is used, remove the air filter (supplied with the unit), then install a filter (field supplied) at suction side.

# DIMENSIONS: PUZ-HA36NHA2



**Intertek**



3400 Lawrenceville Suwanee Rd  
Suwanee, GA 30024  
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Toll Free: 800-433-4822 (#3)  
www.mehvac.com  
Specifications are subject to change without notice.

**SUBMITTAL DATA: PEAD-A30AA4 & PUZ-HA30NHA2... 30,000 BTU/H HORIZONTAL-DUCTED HYPER HEAT-PUMP SYSTEM**

Job Name:	Location:	Date:
Purchaser:	Engineer:	
Submitted to:	For <input type="checkbox"/> Reference <input type="checkbox"/> Approval <input type="checkbox"/> Construction	
System Designation:	Schedule No.:	

**GENERAL FEATURES**

- Innovative flash technology enables high heating capacity at lower outside temperatures
- Exhibits 100% of rated heating capacity at 5°F; 90% of rated heating capacity at -4°F
- Horizontal-ducted indoor unit features medium static pressure capability and a thin 9-7/8" high body
- Built-in drain mechanism for condensate removal; lifts to 27-9/16"
- Air filter is included with indoor unit
- Self-check function—integrated diagnostics
- Knockout for ventilation air
- Limited warranty: five years on parts and defects and seven years on compressors

**OPTIONAL ACCESSORIES**

**Outdoor Unit**

- Outdoor Unit
- M-NET Adapter (PAC-SF81MA-E)
- Air Outlet Guide (PAC-SG59SG-E; two pieces required)
- Wind Baffle (WB-PA2; two pieces required)

**Controller Options**

- Wall-mounted Wired Remote Controller (PAR-21MAA)
- External Heat Adapter CN24 Relay Kit (CN24RELAY-KIT-CM)
- Remote Temperature Sensor (PAC-SE41TS)
- Hand-held Wireless Remote Controller (PAR-FL32MA; req. PAR-FA32MA-E)
- Wireless Signal Receiver Module (PAR-FA32MA-E)

**Cooling\***

Rated Capacity	30,000 Btu/h
Minimum Capacity	18,000 Btu/h
SEER	16.5 Btu/h/W
Total Input	2,500 W

**Heating at 47°F\***

Rated Capacity	32,000 Btu/h
Minimum Capacity	12,000 Btu/h
HSPF (IV)	9.5 Btu/h/W
Total Input	2,750 W

**Heating at 17°F\***

Rated Capacity	19,000 Btu/h
Rated Total Input	2,590 W
Maximum Capacity	32,000 Btu/h
Maximum COP	1.90
Maximum Total Input	4,930 W
* Rating Conditions (Cooling) - Indoor: 80°F (27°C) DB / 67°F (19°C) WB, Outdoor: 95°F (35°C) DB / 75°F (24°C) WB.	
(Heating) - Indoor: 70°F (21°C) DB / 60°F (16°C) WB, Outdoor: 47°F (8°C) DB / 43°F (6°C) WB.	
(Heating at 17°F) - Indoor: 70°F (21°C) DB / 60°F (16°C) WB, Outdoor: 17°F (-8°C) DB / 15°F (-9°C) WB.	

**Heating at 5°F\***

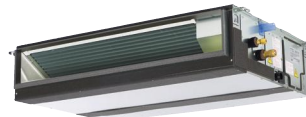
Rated Capacity	32,000 Btu/h
Maximum COP	1.73
Maximum Total Input	5,420 W

**Electrical Requirements**

Power Supply	208 / 230V, 1-Phase, 60 Hz
Recommended Fuse/Breaker Size	30 A

**Voltage**

Indoor - Outdoor S1-S2	AC 208 / 230V
Indoor - Outdoor S2-S3	DC24V
Indoor - Remote Control	DC12V



Indoor Unit: PEAD-A30AA4



Outdoor Unit: PUZ-HA30NHA2

**OPERATING CONDITIONS**

		Indoor Intake Air Temp.	Outdoor Intake Air Temp.
Cooling	Maximum	90°F (32°C) DB, 73°F (23°C) WB	115°F (46°C) DB
	Minimum	66°F (19°C) DB, 59°F (15°C) WB	0°F** (-18°C) DB
Heating	Maximum	83°F (28°C) DB	70°F (21°C) DB, 59°F (15°C) WB
	Minimum	63°F (17°C) DB	-13°F (-25°C) DB, -13°F (-25°C) WB

\*\* With optional wind baffle accessory installed. If not installed, the minimum temperature will be 23°F (-5°C) DB.

**Indoor Unit**

MCA	2.73 A
Fan Type x Quantity	Sirocco fan x 2
Fan Motor Type	Direct-driven DC Brushless Motor
Fan Motor	2.18 F.L.A.
Fan Motor Output	121 W
Airflow (Lo - Med - Hi)	618 - 742 - 883 Dry CFM
	565 - 671 - 812 Wet CFM
Air Filter	Polypropylene Honeycomb
External Static Pressure	0.14 - 0.20 - 0.28 - 0.40 - 0.60"WG
Sound Pressure Level (Lo - Med - Hi)	30 - 34 - 39 dB(A)
SHF	0.75
Moisture Removal	7.9 pt./h

DIMENSIONS	UNIT INCHES / MM
W	43-5/16 / 1,100
D	28-7/8 / 732
H	9-7/8 / 250

Weight	73 lbs. / 33 kg
External Finish	Galvanized-steel Sheet
Field Drainpipe Size O.D.	1-1/4" / 32 mm

**Outdoor Unit**

Compressor	DC Inverter-driven Twin Rotary
MCA	25 A
MOCP	40 A
Fan Motor	0.75 F.L.A.
Sound Pressure Level	
Cooling	48 dB(A)
Heating	50 dB(A)

DIMENSIONS	INCHES / MM
W	37-3/8 / 950
D	13 + 1-3/16 / 330 + 30
H	53-1/8 / 1,350

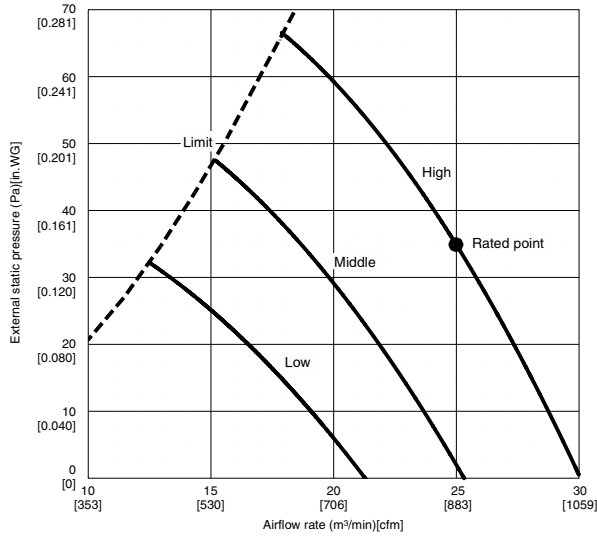
Weight	265 lbs. / 120 kg
External Finish	Munsell No. 3Y 7.8 / 1.1
Refrigerant Type	R410A
Refrigerant Pipe Size O.D.	
Gas Side	5/8" / 15.88 mm
Liquid Side	3/8" / 9.52 mm
Max. Refrigerant Pipe Length	245' / 75 m
Max. Refrigerant Pipe Height Difference	100' / 30 m
Connection Method	Flared



# INDOOR UNIT PEAD-A30AA4 FAN PERFORMANCE AND AIRFLOW RATES

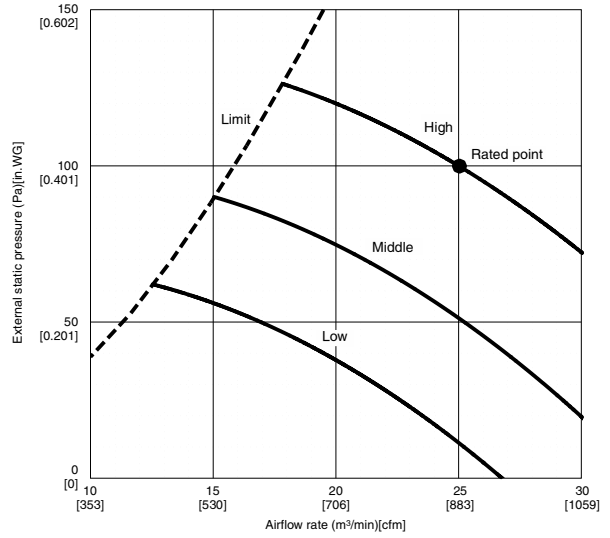
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(External static pressure 35Pa [0.14 in. WG]) 208-230V 60Hz



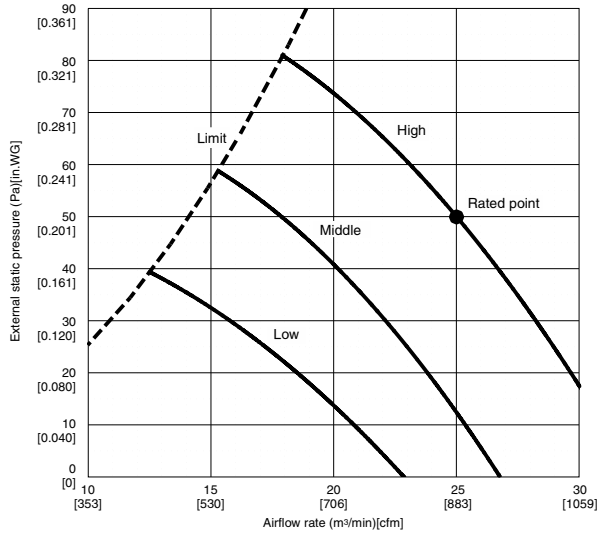
## PEAD-A30AA4

(External static pressure 100Pa [0.4 in. WG]) 208-230V 60Hz



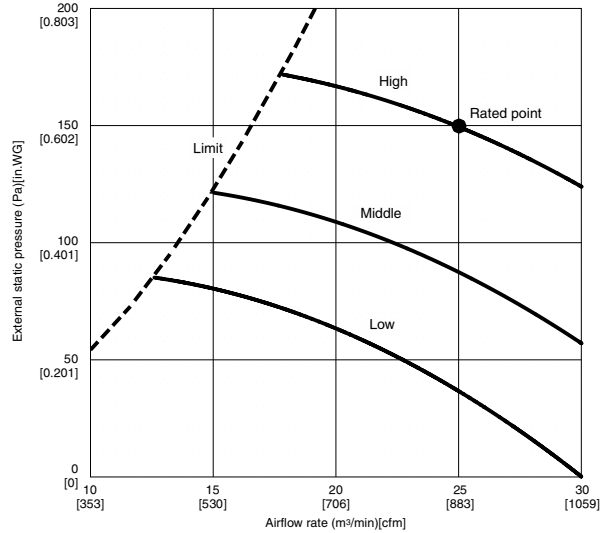
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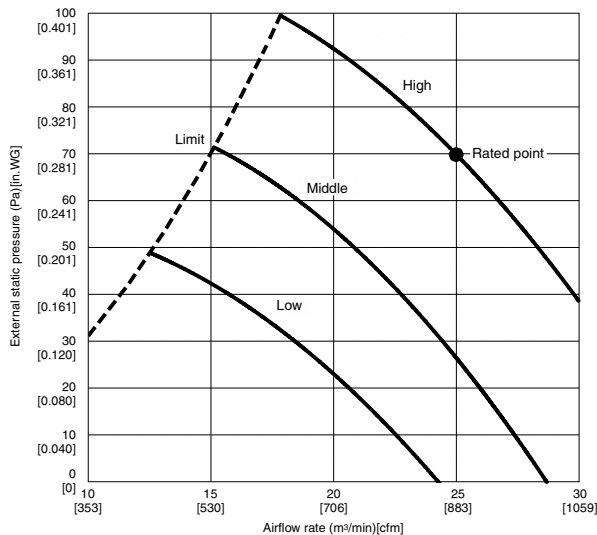
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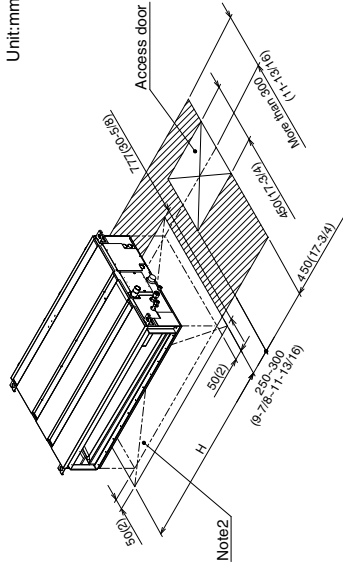
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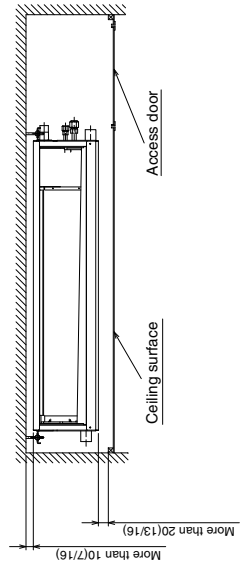
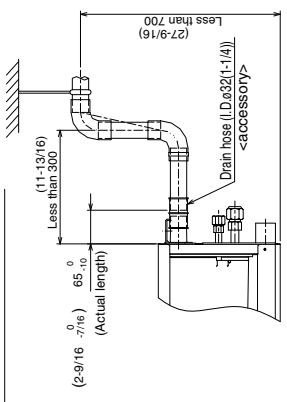


# DIMENSIONS: PEAD-A30AA4

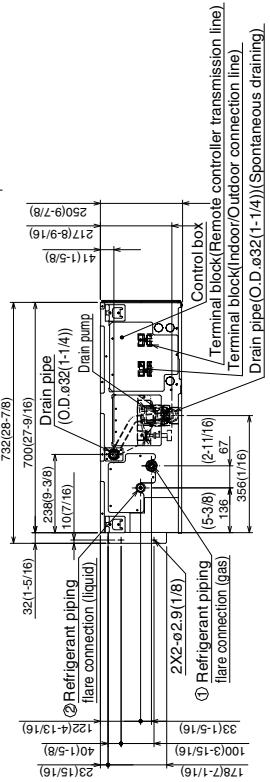
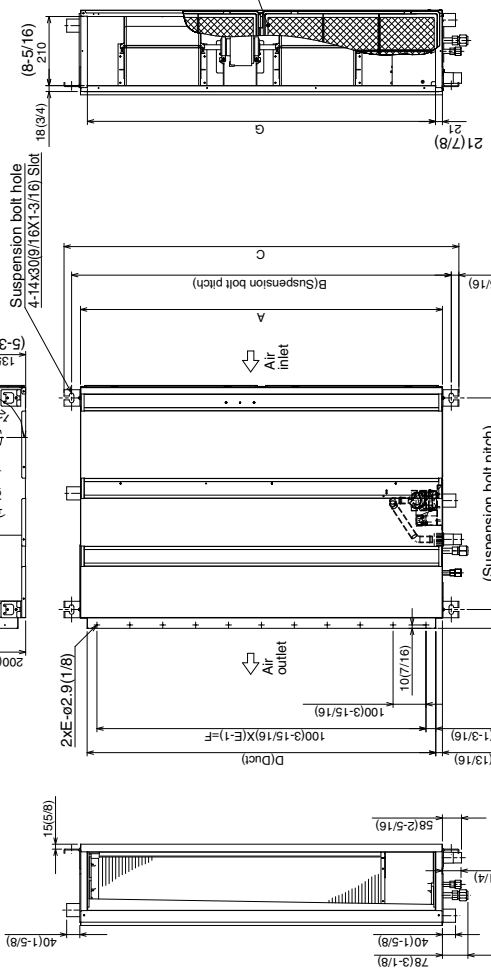
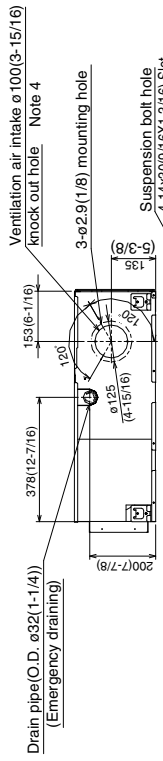
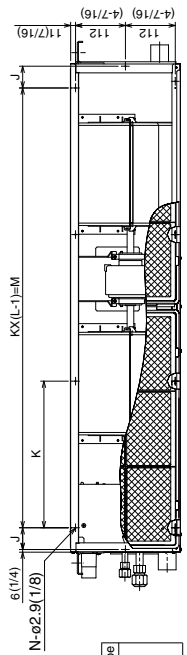
Unit:mm(in.)



Required space for service and maintenance



Make the access door at the appointed position properly for service maintenance.

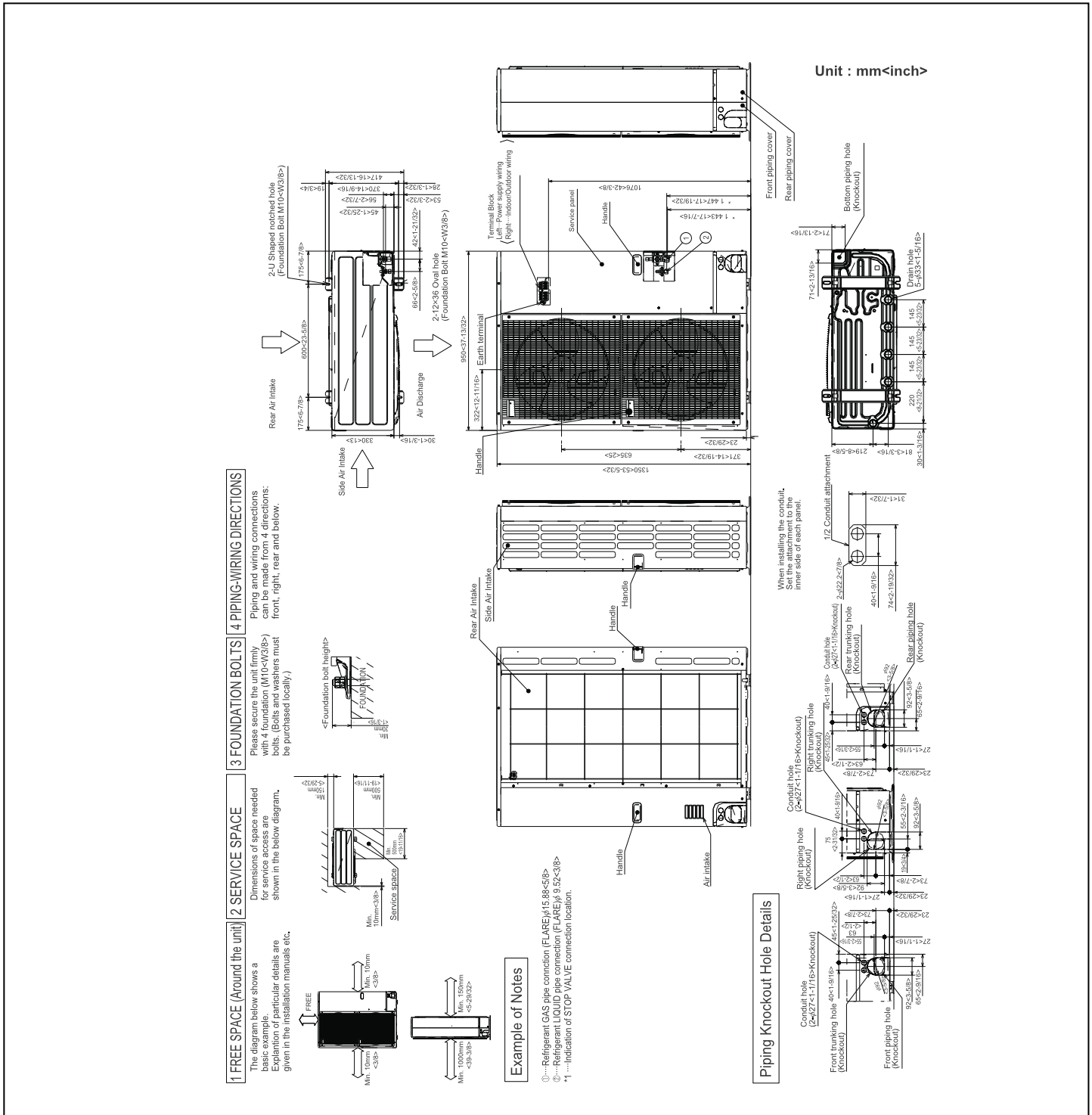


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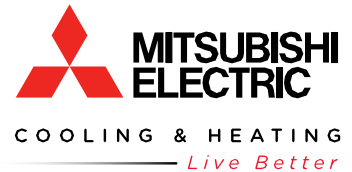
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