

CITY OF PORTLAND, MAINE

PLANNING BOARD

Stuart O'Brien, Chair
Timothy Dean, Vice Chair
Elizabeth Boepple
Sean Dundon
Bill Hall
Carol Morrissette
Jack Soley

January 7, 2014

Joe Flynn
133 York, LLC
110 Marginal Way Ste 292
Portland, ME 04101

Thomas S Greer PE
28 Vannah Avenue
Portland, ME 04103

Project Name: Residential townhouse - 6 unit condominium
Project ID: 2013-187
Project Address: 133 York Street
CBL: 44-1-29 &31
Applicant: 133 York, LLC, Applicant
Planner: Jean Fraser

Dear Mr Flynn and Mr Greer:

On January 28th, 2014 the Portland Planning Board considered and approved a Level III Final Site Plan and Subdivision proposal for the construction of a 6 unit residential building at 133 York Street.

The Planning Board reviewed the proposal for conformance with the standards of the Subdivision Ordinance and Site Plan Ordinance and voted 6-0 (Dundon absent) to approve the application with the following waivers and conditions as presented below.

WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street relevant to Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board voted 6-0 (Dundon absent) to waive the Ordinance Section 14-526 (b) (2) (b) (iii) Street Trees to allow for a contribution of \$600 to the City's Street Tree Fund to be substituted for the provision on site of three of the required street trees.
2. The Planning Board voted 6-0 (Dundon absent) to waive the Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow a drive aisle of less than 24 feet , as shown on Plan P3 subject to the requirement that the bike rack be relocated.

DEVELOPMENT REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street relevant to the Site Plan and Subdivision reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

1. SUBDIVISION

The Planning Board voted 6-0 (Dundon absent) that the plan is in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

- i. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to easements, snow removal, tree preservation, stormwater system maintenance, relevant conditions, and addressing the comments of the Associate Corporation Counsel dated 1.23.2014; and
- ii. That the Condominium Association documents shall reference the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, adequate snow removal and the ongoing maintenance of the preserved trees, to be reviewed and approved by Corporation Counsel prior to the recording of the Subdivision Plat; and
- iii. That the applicant and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system as described in Attachment L and W of this Report, shall be approved by Corporation Counsel and Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and
- iv. That the applicant shall ensure that tree preservation/protection measures are undertaken in accordance with the comments of the City Arborist dated 9.6.2013 and 11.1.2013, and that the Condominium Association documents shall include responsibilities for ongoing tree preservation measures; and
- v. That the Subdivision Plat shall include a note confirming the Snow Removal Plan details and that the Condominium Association is responsible for this being undertaken in a timely fashion.

2. SITE PLAN REVIEW

The Planning Board voted 6-0 (Dundon absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

- i. That the applicant shall submit a revised front elevation to address the Design Review comments dated 1.23.2014 concerning the lighting under the entrance canopy, for review and approval by the Planning Authority prior to the issuance of a building permit; and
- ii. That the applicant shall submit a revised Site Plan, Utility Plan and Landscape Plan that address the 1.23.2014 City Arborist comments in respect of planting materials, and include documentation of fencing details on the south and west boundaries and utility modifications on and near the north boundary, for review and approval by the Planning Authority, Department of Public Services and City Arborist prior to the issuance of a building permit; and
- iii. That the applicant shall finalize all easements/temporary construction agreements for work outside the site, and that recorded copies are submitted to the Planning Authority prior to the issuance of a building permit; and
- iv. That the applicant shall submit a revised Construction (traffic) Management Plan for activities in York Street that addresses Tom Errico's comments of 1.23.2014, for review and approval by the Planning Authority and Department of Public Services prior to the issuance of any City permits; and
- v. That the applicant shall submit a more detailed Construction Plan for the area to the north side and rear of the site that includes the items listed in the Engineering comments dated 11.7.2013 (and identify the method of supervision) and submit the plans for the temporary metal sheeting and associated excavation stamped by a professional engineer, all for review and approval by the Inspections Division as part of any demolition permit review and copied to the Planning Authority prior to the issuance of a demolition permit for the existing building; and

- vi. That the applicant shall reconsider the location of the bicycle parking rack so that it does not impede access to parking spaces and is readily visible and accessible to potential users, with a plan showing the revised location to be reviewed and approval by the Planning Authority prior to the issuance of a building permit; and
- vii. That the FDC connection shall be located at York Street; and
- viii. That the Condominium Association documents shall include the requirement that any external condensers for heating or cooling units shall be located out of sight of neighbors and include sound baffling so that the sound level at the property line is at or below 45dBA between 10pm and 7am, and below 50 dBA between 7am and 10pm; and
- ix. That the applicant shall submit a revised photometric plan, prior to the installation of the bollard lighting, that shows that the light levels from the new lighting under the entrance canopy and the proposed bollards along the drive access meet the standards set out in Section 12 *Site Lighting Standards* in the City's Technical Manual.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street, which is attached. The standard conditions of approval are listed below.

STANDARD CONDITIONS OF APPROVAL

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

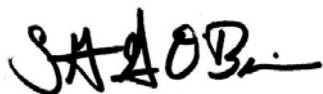
1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the posting of a performance guarantee. The performance guarantee must be posted prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval.
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
5. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
6. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
7. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a subdivision plat for recording at the Cumberland County of Deeds, and prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.

8. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
9. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
10. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
11. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.
12. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If you have any questions, please contact Jean Fraser at 874 8728 or jf@portlandmaine.gov

Sincerely,



Stuart O'Brien, Chair
Portland Planning Board

Attachments:

1. Associate Corporation Counsel comments dated 1.23.2014
2. City Arborist comments dated 9.6.2013 and 11.1.2013 (underlined sections)
3. Design Review comments dated 1.23.2014
4. City Arborist comments 1.23.2014
5. Traffic Engineering (Tom Errico) comments 1.23.2014
6. Engineering comments dated 11.7.2013
7. Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street
8. City Code Chapter 32
9. Sample Stormwater Agreement
10. Performance Guarantee Packet

Electronic Distribution:

Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Jean Fraser, Planner
Philip DiPierro, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Tammy Munson, Inspections Division Director
Lannie Dobson, Inspections Division
Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services
Greg Vining, Associate Engineer, Public Service

Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Captain Chris Pirone, Fire Department
Danielle West-Chuhta, Corporation Counsel
Jennifer Thompson, Associate Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File

From: Jennifer Thompson
To: Fraser, Jean
Date: 1/23/2014 7:29 AM
Subject: Re: 133 York Street Plat and Condo Docs

Jean - I agree with your assessment. The Plat and the condo docs for this application are marginal. Although I realize that the practice has, somewhat by necessity, been to make final edits to the plat and condo docs a condition of approval, there is still a requirement that applications for subdivision approval be complete when the go before the Board and that the proposed plat and condo docs contain sufficient detail to allow the Board to make an informed decision. As you say, for this one the plat and in condo docs need to clear in respect to:

snow clearance requirements

Maintenance requirements

Existing utilities

location and purpose of pedestrian walkway between York and the front door

tree preservation measures (ongoing- maybe also during construction?)

location of tree filter and ref stormwater system maintenance (confirming that this is not city and referring to agreement etc)

Agreement re fencing with York Street apartments (see draft attached)

Plat should show street trees

I would also prefer to see the construction easements depicted.

The subdivision plat really needs to inform folks of necessary information on its face. It is not sufficient to be incorporating by reference other sheets when it comes to the essential contents of the plat.

Jennifer L. Thompson
Associate Corporation Counsel
City of Portland, Maine
(207)784-8480

From: Jeff Tarling
To: Jean Fraser
CC: David Margolis-Pineo
Date: 9/6/2013 1:56 PM
Subject: Re: 133 York comments needed urgently please
Attachments: Portland Recm. Tree List.xls

Hi Jean -

I have reviewed the landscape plans for 133 York Street and offer the following review comments:

Landscape & Buffering:

Due to the lot shape & size the 133 York Street site is unusually "challenged" in regards for 'green space', buffering and landscape improvements, particularly for an established residential neighborhood.

Recommendations: Additional buffering between the proposed project and brick residential property next door should be a requirement condition. The proposed projects driveway and parking is next to their backyard living space, patio & green space. Additional screening in the form of a 'green wall' and / or two to three columnar trees to be planted on the adjacent property would improve.

See green-wall examples: <http://www.greenscreen.com/home.html>

A 'green-wall' in the patio area near the corner and two trees in the lawn? Understanding the proposed project is limited in space and need to be in agreement with the neighboring property to be successful in the tree planting aspect of this condition.

Additional buffering / landscape treatment condition #2 - the left side of the driveway at York Street for the first 40' (area of hash marks on plan) landscape planting or fencing to screen the side yard of the existing residential property next door. The landscape planting should provide screening or buffering as not to adversely affect the existing use next door. (I noted a small seating area on the lawn existing currently)

Tree Types - ALL trees should be from the City of Portland recommended list, (Little-leaf Linden is no longer on our recommended list). Suggestions might include: 'Karpick' or 'Red Point' Red Maple, 'Armstrong' Red Maple, the first two are a little less columnar the Armstrong, European Hornbeam, upright Pin Oak also would work, this is the same for the lawn area trees above if needed.

Tree Saves - Tree protection measures should be included in the final plan and in the field as part of the preconstruction meeting. 'Tree Save' / protection for the root zone of the large Willow tree off site might include fencing if needed, see: http://www.treesaregood.com/treecare/avoiding_construction.aspx

The existing American Elm near the SW corner is next to a large Norway Maple - unknown if this can be saved. It appears to be near the property line and would need to be limbed up for construction. Elm trees should only be pruned during the dormant season to reduce Dutch Elm Disease as fresh cuts attract Elm Bark Beetles.

Relocated Plants - While it is great to try to save existing plants 99% of the time it is unsuccessful due to timing, transplant shock, storage etc during project time line. Thus, all plants shown as to be relocated must be included as new plants and included into the performance guarantees in case the transplants are not successful.

Cobblestone or granite paver driveway & sidewalk - These existing features could add some historic interest to the site and should be considered for saving & reuse. Our HP office & Public Services can offer suggestions.

With some creativity and attention to these suggestions the landscape plan could help the project fit into the existing residential neighborhood with reduced impact.

Jeff Tarling

>>> **Jeff Tarling 11/1/2013 3:43 PM >>>**

Hi Jean -

I have reviewed the latest landscape plan for the proposed 133 York Street project and offer the following comments & conditions:

a) Landscape review - The proposed development at 133 York Street presents challenges to meet standard landscape treatment due to the shape and constraints of the project site. The project does offer landscape amenities such as a green wall to provide screening along with two off-site tree planting locations if agreeable. The building footprint close to existing building site poses challenges to screen but improves on the long existing conditions. Two mature trees are close and will likely have impact during the construction process. Best practices in regards to tree protection are needed to prevent / reduce root zone damage.

b) landscape plant material: plant sizes - Condition) shrub stock noted as "D" Clethra, "F" Deutzia, "J" Northern Bayberry, "K" Climbing Hydrangea, "L" Stephanandra shall all be #3 pot size minimum and tree sizes should be the following: "B" Flowering Crabapple 1.75-2" caliper, "C" Armstrong Red Maple 2" caliper. Items mentioned as "Existing", "G" Relocated Japanese Maple (#5 pot size), "H" Relocated Lilac (3-4'H) should also have these sizes as replacements if the relocation is not successful. (Too often good intent to save plants through construction are less then successful).

c) Green wall - the proposed project use of a green wall will help screen / buffer the adjacent building. The green wall plant type: Climbing Hydrangea is slow growing, and thus the proposed 1 gallon pot size much to small to be effective for many years... recommendations & condition the green wall plant sizes must be #3 pot & #5 pot sizes alternating minimum to provide a good start for the green wall.

d) Tree Save - The project proposes to save or minimally effect the condition of two shade trees close to the project property line on private property. From site inspection some root zone impact is expected and hopefully can be minimized with good tree protection practices. This would include following steps in the ISA trees & construction recommendations; physical trunk protection and construction fence, no storage of materials or equipment in the root zone area. Inspection of trenching etc when roots are exposed, cutting damaged roots cleanly with saw vs leaving them damage by earth equipment. If trees can not saved or damaged, replacement trees shall be installed. This would follow site specification standards.

Trees & Construction damage info, See:

http://www.treesaregood.org/treecare/avoiding_construction.aspx

http://www.treesaregood.org/treecare/treatment_construction.aspx

The revised landscape plan addresses earlier comments in regards to buffer along the left side of the driveway and the north side of the project. The project with the conditions mentioned would be acceptable.

Jeff Tarling

Memorandum

Planning and Urban Development Department Planning Division

To: Planning Board

From: Alex Jaegerman, Caitlin Cameron, Jean Fraser

Date: January 23, 2014

**Re: Design Review 133 York Street- for January 2014 Hearing
R6 Design Standards**

BACKGROUND

1. Staff reviewed the submitted black and white elevations in early September and considered the proposals generally met the principles and standards of the R6 Design guidelines except regarding C-1 and F-6 (main entrance), where it was recommended that the central entrance at ground level be more strongly emphasized through the introduction of features such as transom windows, wider door, more robust canopy articulation. Staff also asked for information as to why one half of the building is higher than the other, and confirmed at the Workshop that the comments were preliminary as staff had not seen color renderings nor samples of materials.
2. At the Workshop color renderings were shown which staff had not previously seen which showed large areas of blue metal cladding on the rear and side elevations. The Board and neighbors raised concerns over the materials and the bland rear elevation. These issues were discussed at a staff meeting on September 23, 2013 with Bob Howe the applicants architect. Staff were given to understand that the applicant was committed to the proposed materials (including colors) but open to some redesign. The discussion also reiterated staff concerns regarding the weak entrance area at the front.
3. The architects submitted revised elevation treatments as part of the October 1, 2013 submission. Staff welcomed the improvements to the front door area but considered that the rear elevation was still unresolved, with little articulation and no obvious design aesthetic. The roof cornice at the rear was suggested as an aspect that could be improved, along with less blue cladding and more/larger windows. A revised elevation was submitted on October 4, 2013 that included more windows, less blue cladding and with the cornice at the rear to match the cornice round the rest of the building. This remains as the final submission for consideration at the hearing.
4. The final plans submitted for the November 2013 hearing were:



5. The design review comments for the November hearing regarding the final plans (above) were (in summary) that the proposed materials in and of themselves appear to meet the standard- but the choice of specific colors, trim and the scale and location of contrasting materials does not relate to any local design character. In addition staff noted that the rear elevation remained weak in relation to the standard; while more balanced with the addition of windows and improved by the larger cornice treatment, it still lacks in articulation and interest. The applicant had explored relatively minor cladding revisions and these do not fully address the Principle F regarding "Articulation".
6. At the November 12, 2013 Hearing the Planning Board tabled the project and requested that the applicant reconsider the design to address the Board, staff and neighbor comments regarding both elevations. The applicant has submitted the following final architectural designs for the elevations:



FINAL COMMENTS FOR HEARING ON JANUARY 28, 2014

7. The rear elevation incorporates greater changes in texture and plane to break up the massing and overall more compatible with surrounding building styles though still lacking in a coherent "design approach". The modification of the front elevation to remove the blue metal cladding makes the building design more harmonious and compatible, but reduces the prominence of the central front entrance section which faces York Street (which was an earlier design issue/comment).
8. Staff recommend the following revisions to reemphasize the entrance function and address the roof line which does not appear to be completely resolved in these final elevations:
- The tone of the entire central entrance section should be somewhat darker to contrast with the abutting material;
 - The overlarge and angled central cornice area should be simplified so it relates to the canopy over the entrance door and better ties into the roof line; and
 - Lighting (downlighting) from underneath the entrance canopy should be added.

From: Jeff Tarling
To: Jean Fraser
Date: 1/23/2014 8:41 AM
Subject: Re: 133 York

Hi Jean -

The hydrangea size should be #5 gallon pot size minimum, proposed #1 gal size is too small to provide any screening for several years, this buffer is an important feature of the landscape plan. Ideally, every fourth plant could be a #7 size pot to add some height to the planting from the start. Climbing Hydrangea are slow growing.

Jeff

From: Tom Errico <thomas.errico@tylin.com>
To: Jean Fraser <JF@portlandmaine.gov>
CC: David Margolis-Pineo <DMP@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>, "JeremiahBartlett" <JBartlett@portlandmaine.gov>
Date: 1/23/2014 9:41 AM
Subject: 133 York Street

Jean - I have reviewed the document that discusses the general principles for utility construction work and impacts to York Street. The general principles are acceptable (e.g. that construction activity shall not impact peak times periods). With that said greater detail will be required in terms of how traffic and pedestrians are managed during construction. Accordingly, the applicant will be required to submit a traffic control plan for review and approval prior to the issuance of any City permit. I want to conclude that traffic volumes are very high on York Street and therefore careful attention to the plan is required. Lastly, pedestrian safety will be closely reviewed and plans must account for providing ADA compliant facilities, if detours are required.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
[T.Y. Lin International]T.Y. Lin International
12 Northbrook Drive
Falmouth, ME 04105
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Twitter | Facebook | LinkedIn | YouTube

"One Vision, One Company"

Please consider the environment before printing.

From: David Senus <dsenus@woodardcurran.com>
To: Jean Fraser <JF@portlandmaine.gov>
CC: Michael Farmer <Mfarmer@portlandmaine.gov>, "Thomas.Errico@tylin.com" <Thomas.Errico@tylin.com>
Date: 11/7/2013 1:15 PM
Subject: RE: final comments re 133 York Street

Hi Jean.

In reading through the Construction Plan for 133 York Street, I offer the following comments:

- >The plan should note the anticipated duration of construction
- >The plan should note work days and work hours
- >The plan states that demolition will be completed in one day, but then states the "process" (demolition & removal) will take place within one to two working days; this should be clarified
- >The plan notes installing "six foot tall construction fencing" across the property line; the fence should be installed along the property line and should not encroach on neighboring properties (unless an easement is granted)
- >The plan should note that a stabilized construction entrance/exit will be constructed at the York Street driveway per the Erosion and Sediment Control Plan, and that the York Street Right-of-Way shall be kept clean from dust and construction debris and swept as determined necessary by the Contractor or as requested by the City of Portland to minimize dust and sediment originating from the site.

Tom, Mike or Jeremiah may have other comments related to construction access to the site on York Street from a traffic/signage perspective.

Thanks,
Dave

David Senus, PE (Maine), Project Manager
Woodard & Curran, Inc.
41 Hutchins Drive
Portland, ME 04102
Phone: (800) 426-4262 x3241
Cell: (207) 210-7035
Fax: (207) 774-6635

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ADDENDUM PLANNING BOARD REPORT PORTLAND, MAINE

Residential townhouse - 6 unit condominium
133 York Street
Level III Site Plan and Subdivision
Project ID 2013-187
133 York, LLC, Applicant

Submitted to: Portland Planning Board Public Hearing Date: January 28 th , 2014	Prepared by: Jean Fraser, Planner Date: January 24 th , 2014 Addendum to Planning Board Report # 50-13
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I. INTRODUCTION

The Planning Board held a hearing on November 12, 2013 to consider the Level III Site Plan and Subdivision application for the construction of a 6 unit residential building at 133 York Street. The Hearing was based on the the tabled Hearing Report #50-13 as well as evidence and comment by the applicant and the public. The Board voted 6-1 (Dean opposed) to table the final vote to a future date to be agreed between the applicant and staff.

This Addendum to Report #50-13 has been prepared to update on the revisions to the proposals to address the concerns raised at the November hearing. Except where stated in this Addendum, all other information and review comments in original Report remain unchanged. A revised motion with potential conditions is included in this Addendum.

This Hearing has been noticed to 169 neighbors and interested parties, and the public notice appeared in the *Portland Press-Herald* on January 20th and 21st, 2014. Since the November hearing there has been one further comment from Susan Kaplan, representing the Harborview Flats Condominium Association, which confirms in-principle agreement to the proposals as they affect the boundary fence (PC 10). All of the earlier public comments are included in Public Comment attachments PC1-9.

II. BACKGROUND

There were a number of unresolved issues identified by the Planning Board that the applicant was requested in the final submissions:

- Architectural design, especially the north elevation
- Impact on and communication with immediate neighbors
- Need for greater certainty on how condominium and site plan/subdivision conditions would be enforced eg re construction management
- Resolution of a way to retain cobblestones near the drive entrance
- Confirmation of fencing/screening along southern property line
- Pole and utilities on northern boundary

The applicant has submitted a letter confirming what revisions have been incorporated into the final submissions (Attachments A-G and Plans P1-P31) to address these comments and the potential conditions listed in the previous report (Report #50-13 included with this Addendum) . Staff comments are structured to address the original list of potential conditions and then the other comments and concerns that arose at the November hearing.

III. STAFF UPDATE ON THE POTENTIAL CONDITIONS OF APPROVAL CONTAINED IN REPORT #50-13

1. **SUBDIVISION:** [Potential conditions of approval as in Report #50-13]

- i. *That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to easements, snow removal, green wall maintenance, Condominium Association documents and relevant conditions; and*
- ii. *That the Condominium Association documents shall reference the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, adequate snow removal and the ongoing maintenance of the green wall, to be reviewed and approved by Corporation Counsel. The documents shall also address the relevant conditions of approval and be finalized to the satisfaction of the Corporation Counsel prior to the recording of the Subdivision Plat; and*

Update: The applicant has submitted an amended draft Subdivision Plat (Plan P2) and revised condominium association documents (Attachment B). Staff have requested that key issues and features of the proposal be identified and noted on the plat and in the condo documents eg snow removal, tree preservation and stormwater maintenance responsibilities. These are not mentioned in the documents and the plat as drafted shows these by reference to other plans and documents but does not specify the limitations directly. As explained in the comments from the Associate Corporation Counsel (Attachment 5), where there are important limitations that would apply in the long term these should be explicitly stated. The two conditions still apply but have been reworded.

- iii. *That the applicant and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system as described in Attachment L and W of this Report, shall be approved by Corporation Counsel and Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and*

Update: This condition still applies.

- iv. *That the applicant shall ensure that tree preservation/protection measures are undertaken in accordance with the comments of the City Arborist dated 9.6.2013 and 11.1.2013, and that the Condominium Association documents shall include responsibilities for ongoing tree preservation measures; and*

Update: The applicant has noted the tree preservation requirements on the site plan but a condition is still required to identify which trees are to be preserved on the plat and to ensure that the plat and the Association documents specify the requirements in more detail.

- v. *That the applicant shall add a note on the Subdivision Plat that the Condominium Association shall be responsible for the maintenance of the green wall, both the structure and the planting, and that any damage from vehicles backing into green wall shall be repaired within one week; and*

Update: The separate green wall has been removed and an agreement is understood to have been reached between the applicant and the owners of the Harborview Flats Condominium to add slats to their existing fence and plant hydrangea on the applicants side of the fence. A draft Easement has been submitted (Attachment F) and the Harborview Flats appear to be in agreement with this proposal. The plans (Plan P4 and P6) as submitted do not reflect this agreement and a revised potential condition has been included to ensure the documents are consistent.

- vi. *That the Subdivision Plat shall include a note confirming the Snow Removal Plan details and that the Condominium Association is responsible for this being undertaken in a timely fashion.*

Update: See above. The condition still applies.

2. **SITE PLAN REVIEW** [Potential conditions of approval as in Report #50-13]:

- i. *That the applicant shall submit a revised proposal for the materials (including color scheme) and rear elevation articulation of the proposed building, for review and approval by the Planning Authority prior to the issuance of a building permit; and*

Update: The applicant has met with staff and both immediate abutters for input into a revised design, with the main focus on the back elevation. The Design Review memo in Attachment 6 outlines the stages in the discussions and how the design evolved to the final version in Plans P17-P19 and P25-P31.

Staff do not have any serious concerns regarding the final design, but request three minor revisions to refine the latest design:

- The tone of the entire central entrance section should be somewhat darker to contrast with the abutting material;
- The overlarge and angled central cornice area should be simplified so it relates to the canopy over the entrance door and better ties into the roof line; and
- Lighting (downlighting) from underneath the entrance canopy should be added.

Thus a modified version of this condition of approval applies to the updated elevations.

- ii. *That the applicant shall submit a revised Landscape Plan that addresses the 11.1.2013 City Arborist comments in respect of planting material and green wall, for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit; and*

Update: The revised plans do not list the increased pot sizes for the hydrangea as recommended by staff (see Jeff Tarling comments in Attachment 2, which were also noted in Mr Tarling's previous comments) nor clarified re the fencing on the south boundary, so a similar condition has been included in the Motion for the Board to consider.

- iii. *That the applicant shall obtain easements or temporary construction agreements for all work outside the boundaries of the site; these (if any) shall be provided to the Planning Division prior to the issuance of a building permit; and*

Update: The applicant has met with neighbors and submitted draft easements related to impacts to the north, west and south (Attachments E, F and G). Staff have not received confirmation from the neighbors regarding the content but recommend that the approval could be conditioned on receipt of the final signed and recorded easement agreements.

- iv. *That the applicant shall submit a Construction (traffic) Management Plan for activities in York Street, for review and approval prior to the issuance of any City permits. In view of the high level of traffic on York Street, it is very likely that construction activity will not be allowed during peak traffic time periods; and*

Update: The applicant has submitted the "Utility Construction Plan" (text document as Attachment C). The Traffic Engineer has reviewed the Plan and comments (Attachment 3):

I have reviewed the document that discusses the general principles for utility construction work and impacts to York Street. The general principles are acceptable (e.g. that construction activity shall not impact peak times periods). With that said greater detail will be required in terms of how traffic and pedestrians are managed during construction. Accordingly, the applicant will be required to submit a traffic control plan for review and approval prior to the issuance of any City permit. I want to conclude that traffic volumes are very high on York Street and therefore careful attention to the plan is required. Lastly, pedestrian safety will be closely reviewed and plans must account for providing ADA compliant facilities, if detours are required.

Thus the condition still applies.

- v. *That the applicant shall submit a more detailed Construction Plan for the area to the north side and rear of the site that includes the items listed in the Engineering comments dated 11.7.2013 (and identify the method of supervision) and submit the plans for the temporary metal sheeting and associated excavation stamped by a professional engineer, all for review and approval by the Planning Authority prior to the issuance of a demolition permit for the existing building; and*

Update: The applicant has commented that this information will be submitted with the building permit application. The condition therefore remains and has been revised to have a copy of this information submitted to the Planning Authority to facilitate coordination.

- vi. *That the applicant shall submit a revised Site Plan that relocates the bicycle parking rack so that it does not impede access to parking spaces, for review and approval prior to the issuance of a building permit; and*

Update: This location (shown on Plan P12) is not apparent to visitors and staff suggest an alternative location be identified and shown on one of the key civil plans (eg site plan or landscape plan).

- vii. *That the FDC connection shall be located at York Street; and*

Update: This condition to remain to allow for a final detailed review as part of the building permit process.

- viii. *That the Condominium Association documents shall include the requirement that any external condensers for heating or cooling units shall be located out of sight of neighbors and include sound baffling so that the sound level at the property line is at or below 45dBA between 10pm and 7am, and below 50 dBa between 7am and 10pm; and*

Update: This requirement would be shown on the plat in the list of Planning Board conditions.

- ix. *That the applicant ensure, at their cost, that the electrical lines (from Park Street into the building to be demolished) are removed prior to the issuance of a Demolition Permit; and that the pole is removed prior to the issuance of a Certificate of Occupancy. If the pole and light are to remain to serve the parking lot at McCormick Place, the applicant shall provide evidence that the cost of the electricity to serve the retained light is being borne by a private party and not the City; and*

Update: The applicant has indicated that an arrangement has been reached with the McCormick Place condominium association to remove the pole and light and provide a new light elsewhere on their property. The applicant has indicated (Attachment A) that Plans P4 and P6 include notes to this effect, but staff were unable to located notes confirming this arrangement. A revised potential condition has been included to document the final arrangement.

- x. *That the applicant shall submit a revised photometric plan, prior to the installation of the garage lighting and bollard lighting, that shows that the light levels from revised ceiling mounted lights within the parking garage area and the proposed bollards along the drive access meet the standards set out in Section 12 Site Lighting Standards in the City's Technical Manual.*

Update: The more recent Photometric Plan (Plan P24) continues to show very high light levels near the bollards which in turn are near to the Harborview Flats. Recent experience with LED bollard lighting has shown that these can be very bright and may not meet CPTED standards in addition to not meeting the current Technical Standards. The bollard lighting needs to be reconsidered and lighting under the entrance canopy is recommended to address both design and CPTED objectives.

3. COMMENTS OF THE PLANNING BOARD at NOVEMBER HEARING

a. Need for greater certainty on how condominium and site plan/subdivision conditions would be enforced eg re construction management

Update: The draft construction easements (Attachments E, F and G) potentially address some of the concerns, but staff have not received confirmation from McCormick Place Condominium Association nor from the Gilman/Flint property as to whether the proposed easements meet their concerns.

b. Cobbles:

Update: The current proposals do not include the retention or relocation of the existing cobbles in the project. The Existing Conditions and Demolition Plan ([Plan P5](#)) confirms that the cobbles will be salvaged and given to the City.

The Department of Public Services has confirmed that the cobbles may not be relocated within the ROW unless specific consent is given by the City Council as a variance from the sidewalk/apron materials policy. The applicant could purchase the cobbles from the City at \$2 each (staff estimate there are approximately 400 cobbles) and relocate them immediately beside the sidewalk on the private property side. This was suggested to the applicant by staff ([Attachment 1](#)) but the applicant has not confirmed what, if anything, is proposed regarding use of the cobbles near the project.



IV. STAFF RECOMMENDATION

The proposed 6-unit condominium project appears to meet the minimum standards of review, subject to the proposed conditions that seek to ensure documentation of key review requirements and tie up several “loose ends”.

V. MOTIONS FOR THE BOARD TO CONSIDER

a. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street relevant to Portland’s Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board (waives/does not waive) Section 14-526 (b) (2) (b) (iii) Street Trees to allow for a contribution of \$600 to the City’s Street Tree Fund to be substituted for the provision on site of three of the required street trees.
2. The Planning Board (waives/does not waive) Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow a drive aisle of less than 24 feet , as shown on [Plan P3](#) subject to the requirement that the bike rack be relocated.

b. DEVELOPMENT REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street relevant to the Site Plan and Subdivision reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

4. SUBDIVISION:

That the Planning Board finds that the plan (**is/is not**) in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

Potential conditions of approval:

- i. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to easements, snow removal, tree preservation, stormwater system maintenance, relevant conditions, and addressing the comments of the Associate Corporation Counsel dated 1.23.2014; and

- ii. That the Condominium Association documents shall reference the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, adequate snow removal and the ongoing maintenance of the preserved trees, to be reviewed and approved by Corporation Counsel prior to the recording of the Subdivision Plat; and
- iii. That the applicant and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system as described in Attachment L and W of this Report, shall be approved by Corporation Counsel and Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and
- iv. That the applicant shall ensure that tree preservation/protection measures are undertaken in accordance with the comments of the City Arborist dated 9.6.2013 and 11.1.2013, and that the Condominium Association documents shall include responsibilities for ongoing tree preservation measures; and
- v. That the Subdivision Plat shall include a note confirming the Snow Removal Plan details and that the Condominium Association is responsible for this being undertaken in a timely fashion.

5. SITE PLAN REVIEW

The Planning Board finds that the plan (**is/is not**) in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

Potential conditions of approval:

- i. That the applicant shall submit a revised front elevation to address the Design Review comments dated 1.23.2014 concerning tone of material, integration of the cornice, and lighting under the entrance canopy, for review and approval by the Planning Authority prior to the issuance of a building permit; and
- ii. That the applicant shall submit a revised Site Plan, Utility Plan and Landscape Plan that address the 1.23.2014 City Arborist comments in respect of planting materials, and include documentation of fencing details on the south and west boundaries and utility modifications on and near the north boundary, for review and approval by the Planning Authority, Department of Public Services and City Arborist prior to the issuance of a building permit; and
- iii. That the applicant shall finalize all easements/temporary construction agreements for work outside the site, and that recorded copies are submitted to the Planning Authority prior to the issuance of a building permit; and
- iv. That the applicant shall submit a revised Construction (traffic) Management Plan for activities in York Street that addresses Tom Errico's comments of 1.23.2014, for review and approval by the Planning Authority and Department of Public Services prior to the issuance of any City permits; and
- v. That the applicant shall submit a more detailed Construction Plan for the area to the north side and rear of the site that includes the items listed in the Engineering comments dated 11.7.2013 (and identify the method of supervision) and submit the plans for the temporary metal sheeting and associated excavation stamped by a professional engineer, all for review and approval by the Inspections Division as part of any demolition permit review and copied to the Planning Authority prior to the issuance of a demolition permit for the existing building; and
- vi. That the applicant shall reconsider the location of the bicycle parking rack so that it does not impede access to parking spaces and is readily visible and accessible to potential users, with a plan showing the revised location to be reviewed and approval by the Planning Authority prior to the issuance of a building permit; and

- vii. That the FDC connection shall be located at York Street; and
- viii. That the Condominium Association documents shall include the requirement that any external condensers for heating or cooling units shall be located out of sight of neighbors and include sound baffling so that the sound level at the property line is at or below 45dBA between 10pm and 7am, and below 50 dBA between 7am and 10pm; and
- ix. That the applicant shall submit a revised photometric plan, prior to the installation of the bollard lighting, that shows that the light levels from the new lighting under the entrance canopy and the proposed bollards along the drive access meet the standards set out in Section 12 *Site Lighting Standards* in the City's Technical Manual.

ATTACHMENTS

*****Report #50-13 as was considered and tabled at the PB Hearing on November 12th (all sections)*****

Materials received SINCE the November 12th, 2013 Hearing:
[except for public comments, which are all as received since the review began]

Staff Attachments to the Addendum Report

1. Staff e-mail re cobbles 1.8.2014
2. City Arborist comments 1.23.2014
3. Traffic Engineering Review comments 1.23.2014
4. DPS (David Margolis-Pineo) comments
5. Associate Corporation Counsel comments 1.23.2014
6. Design Review Memo dated 1.23.2013

Public Comments (all)

- PC1 Kaplan (Notes of PB Workshop)
PC2 Morrison (125 York Street)
PC3 Kaplan (12 unit brick condos, York Street)
PC4 McGee (33 Park Street - Mc Cormick Place condo)
PC5 Browne (33 Park Street Mc Cormick Place condo)
PC6 Higgins (33 Park Street Mc Cormick Place condo)
PC7 Foley (33 Park Street Mc Cormick Place condo; Pres Condo Association)
PC8 Weiner (33 Park Street Mc Cormick Place condo)
PC9 Gilman & Flint (29 Park Street s/f)

(below are since Nov hearing)

- PC10 Kaplan 1.7.2014

Applicant's Submittal

- A. Greer Letter addressing potential conditions of approval as in #50-13
- B. Revised draft condominium documents
- C. Utility Construction Plan
- D. Lighting specifications
- E. Draft construction easement McCormack Place
- F. Draft construction Easement fence Harborview Flats
- G. Draft construction easement Gilman/Flint

Final Plan Set

- P1. Boundary Survey
- P2. Subdivision Recording Plat
- P3. Condominium Plan
- P4. Site Plan

- P5. Existing Conditions and Demolition Plan
- P6. Grading and Utilities Plan
- P7. Erosion Control and Landscape Plan
- P8. To P10. Details
- P11. Green Tree Filter Detail
- P12. To P16. Floor plans
- P17. To P19. Elevations
- P20. To P21. Wall Plans
- P22. Horizontal and Vertical Boundaries
- P23. Section across site
- P24. Photometric Plan

Graphics and illustrations

- P25. Aerial Photo
- P26. Front View
- P27. Rear View
- P28-31. Aerial views of building (4)

CHAPTER 32 STORM WATER

- Art. I. Prohibited Discharges, §§ 32-1--32-15**
Art. II. Prohibited Discharges, §§ 32-16--32-35
Art. III. Post-Construction Stormwater Management, §§32-36-32-40

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

Applicant. "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

Best management practices ("BMP"). "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority. "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

Exempt person or discharge. "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP").City of Portland

Municipality. "Municipality" means the city of Portland.

Municipal separate storm sewer system, or MS4. "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National pollutant discharge elimination system (NPDES) storm water discharge permit. "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge. "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

Person. "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan. "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

Premises. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Qualified post-construction stormwater inspector. "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

Regulated small MS4. "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

Small municipal separate storm sewer system, or small MS4. "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

Storm drainage system. "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

Storm water. "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

Urbanized area ("UA"). "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

Sec. 32-5.	Reserved.
Sec. 32-6.	Reserved.
Sec. 32-7.	Reserved.
Sec. 32-8.	Reserved.
Sec. 32-9.	Reserved.
Sec. 32-10.	Reserved.
Sec. 32-11.	Reserved.
Sec. 32-12.	Reserved.
Sec. 32-13.	Reserved.
Sec. 32-14.	Reserved.
Sec. 32-15.	Reserved.

ARTICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-17. Responsibility for administration.

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

Sec. 32-18. Prohibition of non-storm water discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-19. Suspension of access to the city's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-20. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-21. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
 - (2) The cessation of discharges, practices, or operations in violation of this article.
 - (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
 - (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

result from any person's reliance on this article or any administrative decision lawfully made hereunder.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-22. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.**
- Sec. 32-24. Reserved.**
- Sec. 32-25. Reserved.**
- Sec. 32-26. Reserved.**
- Sec. 32-27. Reserved.**
- Sec. 32-28. Reserved.**
- Sec. 32-29. Reserved.**
- Sec. 32-30. Reserved.**
- Sec. 32-31. Reserved.**
- Sec. 32-32. Reserved.**
- Sec. 32-33. Reserved.**
- Sec. 32-34. Reserved.**
- Sec. 32-35. Reserved.**

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-37. Post-construction stormwater management plan approval.

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.

(Ord. No. 35-09/10, 9-17-09)

Sec. 32-38. Post-construction stormwater management plan compliance.

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the yare adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file and annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

Sec. 32-39. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
 - (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
 - (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
 - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-40. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)



PORTLAND MAINE

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Planning & Urban Development Department

Jeff Levine, AICP, Director

Planning Division

Alexander Jaegerman, FAICP, Director

Performance Guarantee and Infrastructure Financial Contribution Packet

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

SUBDIVISION/SITE DEVELOPMENT
Cost Estimate of Improvements to be covered by Performance Guarantee

Date: _____

Name of Project: _____

Address/Location: _____

Application ID #: _____

Developer: _____

Form of Performance Guarantee: _____

Type of Development: Subdivision _____ Site Plan (Level I, II or III) _____

TO BE FILLED OUT BY THE APPLICANT:

<u>Item</u>	PUBLIC			PRIVATE		
	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL							
Silt Fence	_____	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____	_____

INSPECTION FEE (to be filled out by the City)

	PUBLIC	PRIVATE	TOTAL
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]**

[Date]

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

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Developer]**, (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of **[Insert: amount of original performance guarantee]**. These funds represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/ or site plan]**, approved on **[Insert: Date]** and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or

3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on [Insert date between April 16 and October 30 of the following year] ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at

_____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the [Insert: subdivision and/ or site plan] approval, dated [Insert: Date] as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

SAMPLE FORM

SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
ESCROW ACCOUNT
[ACCOUNT NUMBER]

[Date]

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

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

[Bank] will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the **[Bank]**, by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

Seen and Agreed to: **[Applicant]**

By: _____

**PERFORMANCE GUARANTEE
with the City of Portland**

Developer's Tax Identification Number: _____

Developer's Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

Application of _____ [Applicant] for _____ [Insert street/Project Name] at _____ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$_____ [amount of performance guarantee] on behalf of _____ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing _____ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on _____ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the _____ [insert: subdivision and/ or site improvements (as applicable)] approval, dated _____ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option,

either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship;
or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
****Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. ****Signature required if over \$50,000.00.

Infrastructure Financial Contribution Form
Planning and Urban Development Department - Planning Division

Amount \$

City Account Number: 710-0000-236-98-00

Project Code: _____

(This number can be obtained by calling Cathy Ricker, x8665)

Project Name:

Application ID #:

Project Location:

Project Description:

Funds intended for:

Applicant's Name:

Applicant's Address:

Expiration:

If funds are not expended or encumbered for the intended purpose by _____, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) _____

Form of Contribution:

Escrow Account

Cash Contribution

Interest Disbursement: Interest on funds to be paid to contributor only if project is not commenced.

Terms of Draw Down of Funds: The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

Date of Form:

Planner:

- Attach the approval letter, condition of approval or other documentation of the required contribution.
- One copy sent to the Applicant.

Electronic Distribution to:

Peggy Axelsen, Finance Department
Catherine Baier, Public Services Department
Barbara Barhydt, Planning Division
Jeremiah Bartlett, Public Services Department
Michael Bobinsky, Public Services Department
Diane Butts, Finance Department
Philip DiPierro, Planning Division
Katherine Earley, Public Services Department
Michael Farmer, Public Services Department
Alex Jaegerman, Planning Division
David Margolis Pineo, Public Services Department
Matt Rancourt, Public Services Department
Jeff Tarling, Public Services Department
Planner for Project