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August 21, 2013

Mr. William Needelman, AICP  
Planning and Development Department  
City of Portland, Maine  
389 Congress Street  
Portland, Maine 04101-3509

**Subject: Canal Landing New Yard – Phase 1  
40 West Commercial Street  
Applicant: New Yard, LLC  
Amended Site Plan Review Comments**

Dear Bill:

We have received and reviewed your review comments dated August 19, 2013 for the Canal Landing New Yard project and offer our responses to these comments. For ease of reference we have repeated each comment in *italics* with our response following.

Comment 1:

*At the time of the original approval, the Board imposed several conditions of approval that remain outstanding. Three of these conditions were addressed in a February 15, 2013 letter to the Planning Office, namely; iv. Other Agency Reviews, vi. Flood Plain Management, and viii. Fire Safety and Emergency Access. Please provide a narrative for the Planning Board describing how and prior to which proposed phase the remaining conditions will be addressed.*

Response:

The Conditions of Approval and the status of each are outlined below:

- i. *MDOT Shared Entrance: that prior to issuance of a building permit, the applicant provides for review and approval an easement between MDOT and New Yard for construction and use of a shared entry way.*

Status:

New Yard LLC continues to work closely with the MaineDOT regarding the easterly area of the site. Satisfaction of this condition is expected to be part of the ongoing IMT expansion dialogue and it is not part of the current Phase 1A activity. New Yard LLC

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retained access rights for access through the existing Commercial Street gate, located at the northeasterly property corner, as evidenced in the Property Deed (CCRD Book 30887, Page 247).

- ii. *Beach Street Intersection Contributions: that prior to issuance of a building permit, the applicant contributes \$5000 for Beach Street intersection improvements.*

Status

New Yard LLC intends to comply with this condition in advance of requesting a building permit. At this time, a building permit will not be requested until an Amended Site Plan Submission is made and approved for several proposed building realignments that are now being considered.

- iii. *Combined Sewer Overflow Easement: that prior to issuance of a building permit, the applicant provides a 30 foot wide easement to the City for the combined sewer overflow line crossing the property from West Commercial Street to the Fore River as shown on the DeLuca-Hoffman Associates, Inc. Site Development Plan, C-2.1, revision 4, dated 12-5-12.*

Status:

New Yard LLC intends to comply with this condition depending on the outcome of the IMT expansion discussions with the MaineDOT, as well as the Amended Site Plan Review. If New Yard LLC seeks a building permit prior to any further progress on the IMT expansion, then they will comply with this condition and offer to the City the necessary easement documents.

- iv. *Other Agency Reviews: that any modifications to City approved plans to meet outside agency requirements must be identified and submitted to the Planning Authority for final review prior to issuance of a building permit. Outside agency permits include, NRPA wetland alteration permits, MaineDEP VRAP approvals, and Portland Harbor Commission approvals.*

Status:

This condition has been previously addressed in the February 15, 2013 letter to the Planning Authority.

- v. *Rail Demolition: that prior to demolition of existing rail infrastructure, the applicant either provides evidence of rail abandonment or a legal opinion for the review and approval of Corporation Counsel that such abandonment is not required.*

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Status:

Item #3 of the accompanying Release Deed provides evidence of the railroad's abandonment of the tracks.

- vi. *Flood Plain Management: that prior to issuance of a building permit, the final site plan is revised to include a note requiring that structures on lots in the development be constructed in accordance with Portland City Code, section 14-450.8, Flood Plain Management.*

Status:

This condition has been previously addressed in the February 15, 2013 letter to the Planning Authority.

- vii. *Stormwater Management: that prior to issuance of a building permit, the applicant provides for review and approval a revised grading and drainage plan and supporting material consistent with consulting stormwater engineer, Dave Senus' review memo dated December 14, 2012, included as Attachment 4 of Planning Report #53-12.*

Status:

New Yard's team will provide revised plans and supporting evidence to address the engineering peer review comments as part of the upcoming Amended Site Plan Application pertaining to the proposed realignment of the Phase 1B building(s). This submission will be made within the next two weeks.

- viii. *Fire Safety and Emergency Access: that prior to issuance of a building permit, the applicant submit a revised site plan for review and approval in compliance with the December 12, 2012 fire code analysis memo from Fire Risk Management, Inc. (Attachment U of Planning Report #53-12) The revised site plan will show emergency access routes to be kept clear of stored and trailered vessels, vehicle parking and snow storage.*

Status:

This condition has been previously addressed in the February 15, 2013 letter to the Planning Authority.

- ix. *Utility Capacity: that prior to issuance of a building permit, that electrical, gas, and sewer capacity letters are provided to the Planning Authority.*

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Status:

Utility capacity letters have been obtained and will be provided as part of the upcoming Amended Site Plan Application related to the building locations.

- x. *Fencing: that the chain link fencing fronting West Commercial Street is provided with a black vinyl coating.*

Status:

New Yard LLC is proposing to salvage some of the existing chain link fence fabric onsite and they intend to apply a black vinyl coating to any salvaged or new fence in compliance with this condition. The fencing is in the area which of interest to MDOT.

Comment 2:

*The previous approval included conditional use review for marine product sales and boat storage. The narrative clearly states that boat storage is proposed in phase 1a. Is the applicant proposing to conduct yacht sales and/or marine product sales on site on the basis of the earliest phase?*

Response:

The applicant is not contemplating yacht sales and/or marine product sales on site as part of the Phase 1A activities. The applicant's initial goals are simply to begin limited placement of boats on the site in the form of a rudimentary boat yard until such time as MDOT provides right title and interest to adjacent property that MDOT intends to purchase to relocate New Yard to the West. These steps by MDOT are necessary so New Yard can quickly reconfigure the buildings and reestablish its master plan to the west. To allow New Yard to meet its current obligations as this transition occurs, it is necessary as a minimum to construct the westerly ramp and to secure the site.

Comment 3:

*The proposed construction trailer is not shown on the phasing plan. If the trailer is proposed for use beyond the construction of phase 1a improvements: show the location and extent of utility connections; locate the nearest existing fire hydrant; and, describe/show circulation and emergency access to the structure.*

Response:

The construction trailer is proposed as only a temporary measure during the Phase 1A period and during the Phase 1B construction. The trailer is not expected to be onsite permanently. The

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Phasing Plan has been annotated per the attached figure to depict the trailer location, nearest fire hydrant and circulation/emergency access route.

Comment 4:

*Regarding the westerly boat ramp: Will a wash down area be improved with the construction of the ramp? If not, where will wash down activity take place and what means to control discharge to the bay will be employed?*

Response:

The applicant intends to employ MeDEP approved measures for any wash down activities. This will include a water recycling system that involves the placement of a concrete pad and sump to collect wash water that is pumped into mobile tanks. The tanks allow sediments to be settled out and the water to be recycled for reuse in more washing activities. This method has been successfully deployed at PYS and has the endorsement of MeDEP staff.

Comment 5:

*The application narrative describes “boat repair activities” to be approved with phase 1a. Please describe in greater detail.*

Response:

The applicant’s boat repair activities under Phase 1A will include out of water activities including repairs, routine maintenance and interior boat work. The activities would reflect the normal maintenance of vessels in a boatyard in the fall. Vessels hauled for extensive work will be waiting for the building to be constructed so work can take place in a sheltered environment.

Comment 6:

*The application narrative proposes “no permanent underground utilities will be installed.” Please describe the extent of both overhead and temporary underground utility proposed.*

Response:

The applicant intends to initially use the west side of the property. Power supply to this area will come off the existing utility poles and overhead wires within the site. This overhead power runs from Commercial Street along the existing NGL Energy driveway into the property. There are existing utility poles with lighting within the site. An existing meter box on one of the poles will be reused and a temporary service extended to a temporary ground mounted panel or into the temporary construction trailer. There are no other utilities proposed as part of Phase 1A.

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If you have any questions regarding these responses please contact this office.

Sincerely,

FAY, SPOFFORD & THORNDIKE

A handwritten signature in black ink, appearing to read "Stephen R. Bushey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen R. Bushey, P.E.  
Senior Engineer

SRB/smk

Attachments: Annotated Phasing Plan

c: Phin Sprague, New Yard LLC  
Bob Flight, New Yard LLC  
Peter Plumb, Murray, Plumb and Murray

## RELEASE DEED

**PORTLAND TERMINAL COMPANY**, a corporation duly organized and existing under the laws of the State of Maine, with offices at 1700 Iron Horse Park, North Billerica, Middlesex County, Massachusetts 01862 (the "Grantor") in consideration of One Million Nine Hundred Eight Thousand Five Hundred Ninety Eight and 67/100 (\$1,908,598.67) Dollars paid to it by **NEW YARD, LLC**, with a mailing address of 58 Fore Street, Portland, ME 04101 (the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon, if any, situated in Portland, County of Cumberland, State of Maine, (the "Premises") described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND  
MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.
2. ~~The Grantor hereby reserves a permanent, exclusive right of way and easement in, on, over, under, across and through the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system or other system for transmission of intelligence or information by any means, whether now existing or hereafter devised, including such poles, pipes, wires, fibers, fiber optic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"). The Grantor further reserves the right to freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. The Grantee hereby covenants with the Grantor to recognize the Telecommunications Easement and, without the payment of any further consideration, to execute, acknowledge and deliver such instruments suitable for recording with the registry of deeds as the Grantor may reasonably require to acknowledge title to the Telecommunications Easement in the Grantor. The Grantor covenants to reasonably repair and restore the surface of the easement area after any work.~~

MAINE REAL ESTATE TAX PAID

3. The Grantor excepts from this conveyance any and all railroad tracks, railroad track materials (including, but not limited to, ties, connections, switches and ballast) and/or related equipment of any description located in whole or in part within the Premises (the "Trackage") and this conveyance is subject to the right of the Grantor to enter the Premises from time to time and at any and all times within the ninety (90) day period commencing with and subsequent to the date of delivery of this deed, with such men, equipment and materials as, in the reasonable opinion of the Principal Engineering Officer of the Grantor, are necessary for the removal of the Trackage. Days during the months of December, January, February and March shall not be included in the aforesaid ninety (90) day period. If the Trackage is not removed from the Premises by the expiration of said ninety (90) day period, the Trackage shall be deemed abandoned by the Grantor and shall then become the property of the Grantee.
4. ~~The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.~~
5. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
6. By the acceptance of this deed and as part consideration therefore, the Grantee agrees to indemnify, defend and hold harmless the Grantor (including its officers, employees, agents, directors, shareholders and affiliates) from and against any and all loss, liability, damage, cost and expense (including reasonable attorneys' fees) occasioned by or associated with any claims, suits and/or enforcement actions (including any administrative or judicial proceedings and any remedial, removal or response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials or substances of any description on, upon or into the Premises in contravention of any ordinance, law or statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq., as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.
7. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to build and forever maintain fences (together with any necessary gates), suitable to the Principal Engineering Officer of the Grantor, along the boundaries of the Premises which are common to remaining land or location of the Grantor (the "Fences"), if Fences are ever required in the sole and reasonable opinion of said~~



~~Principal Engineering Officer.~~

8. This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise.
9. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, adversely affects, increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor. The Grantee agrees to indemnify and save the Grantor harmless from and against any and all loss, cost, damage or expense including, but not limited to, the cost of defending all claims and/or suits for property damage, personal injury or death arising out of or in any way attributable to any breach of the foregoing covenant.~~
10. ~~The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.~~
11. Excepting from this conveyance any and all active tracks and track materials located within the limits of the subject parcel. Said conveyance is hereby made subject to the right of the Grantor, its successors and assigns, to maintain said sections of active tracks and track material in their present location and to operate locomotives and cars thereon, and further, subject to the right of the grantor, to enter upon said above described parcel from time to time and at any all reasonable times in order to inspect, repair, relay, renew, maintain and remove said tracks and track material. However, the Grantor shall not use the tracks for storage of cars that would block the access road to and from West Commercial Street. When the tracks are removed, this right will cease.
12. The Grantee, may, at Grantee's expense, construct and maintain a crossing over the tracks that are located on the Premises herein being conveyed. However, before the crossing is constructed, the location of the crossing has to be approved by the Grantor in writing.
13. Whenever used in this deed, the term "Grantor" shall not only refer to the **PORTLAND TERMINAL COMPANY**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case may be.

- 14. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.

**IN WITNESS WHEREOF**, the said **PORTLAND TERMINAL COMPANY** has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, its President, thereunto duly authorized this 31<sup>st</sup> day of July, 2013.

**GRANTOR:**  
**PORTLAND TERMINAL COMPANY**

*David A. Fink*  
Witness

By: *David A. Fink*  
David A. Fink, President

SEAL

**GRANTEE:**  
**NEW YARD, LLC**

*[Signature]*  
Witness

By: *Phineas Sprague, Jr.*  
Phineas Sprague, Jr., ~~President~~  
MANAGER

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

July 31, 2013

On this 31<sup>st</sup> day of July, 2013, before me, the undersigned notary public, personally appeared the above-named David A. Fink, the President of the PORTLAND TERMINAL COMPANY as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public: Roland Theriault  
My Commission Expires: \_\_\_\_\_

ROLAND L. THERIAULT  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
August 5, 2016

STATE OF MAINE

Cumberland, ss.

July 31, 2013

On this 31<sup>st</sup> day of July, 2013, before me, the undersigned notary public, personally appeared the above-named Phineas Sprague, Jr., <sup>MANAGER</sup> ~~President~~ of NEW YARD, LLC, as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

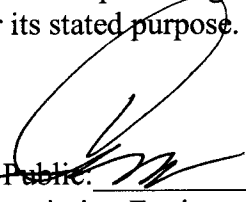
Notary Public:   
My Commission Expires: \_\_\_\_\_  
attorney-at-law  
Drew A. Anderson

EXHIBIT "A"

PORTLAND TERMINAL COMPANY  
TO  
NEW YARD, LLC

**RAILROAD PROPERTY DESCRIPTION**

A CERTAIN LOT OR PARCEL OF LAND SITUATED ON THE EASTERLY SIDE OF WEST COMMERCIAL STREET IN THE CITY OF PORTLAND, COUNTY OF CUMBERLAND AND STATE OF MAINE BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A GRANITE MONUMENT IN A MANHOLE LOCATED IN THE SOUTHERLY SIDELINE OF WEST COMMERCIAL STREET AS SHOWN ON "LAND ON WEST COMMERCIAL STREET, PORTLAND, MAINE, MAINE CENTRAL RAILROAD COMPANY TO NEW YARD LLC" DATED JULY 30, 2013, BY OWEN HASKELL, INC. TO BE RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS;

THENCE, S 32°36'10" W ALONG THE SOUTHERLY SIDELINE OF WEST COMMERCIAL STREET 86.09 FEET TO THE POINT OF BEGINNING;

THENCE, FROM SAID POINT OF BEGINNING S 32°31'38" E ALONG LAND NOW OR FORMERLY OF PORTLAND TERMINAL COMPANY AND LAND NOW OR FORMERLY OF THE CITY OF PORTLAND 580 FEET MORE OR LESS TO LOW WATER;

THENCE, WESTERLY AND SOUTHWESTERLY ALONG LOW WATER 64 FEET MORE OR LESS TO LAND NOW OR FORMERLY OF CASCO WHARF & STORAGE AS DESCRIBED IN DEED RECORDED IN SAID REGISTRY OF DEEDS IN BOOK 1507, PAGE 126;

THENCE, N 32°31'38" W ALONG LAND NOW OR FORMERLY OF SAID CASCO WHARF & STORAGE 14 FEET MORE OR LESS TO THE NORTHEAST CORNER OF LAND NOW OR FORMERLY OF SAID CASCO WHARF & STORAGE;

THENCE, S 59°25'20" W ALONG LAND NOW OR FORMERLY OF SAID CASCO WHARF & STORAGE 602.21 FEET TO LAND NOW OR FORMERLY OF PORTLAND GAS LIGHT CO. AS DESCRIBED IN DEED RECORDED IN SAID REGISTRY OF DEEDS IN BOOK 346, PAGE 374 AND BOOK 646, PAGE 419;

THENCE, S 33°20'20" W ALONG LAND NOW OR FORMERLY OF SAID PORTLAND GAS LIGHT CO. 430 FEET MORE OR LESS TO LOW WATER;

THENCE, WESTERLY ALONG LOW WATER 679 FEET MORE OR LESS TO A POINT;

THENCE, N 16°58'37" W ALONG REMAINING LAND OF THE GRANTOR 541 FEET MORE OR LESS TO THE SOUTHERLY SIDELINE OF WEST COMMERCIAL STREET;

THENCE, N 73°01'23" E ALONG THE SOUTHERLY SIDELINE OF SAID WEST COMMERCIAL STREET 1053.20 FEET;

---

THENCE, N 32°36'10" E ALONG THE SOUTHERLY SIDELINE OF SAID WEST COMMERCIAL STREET 551.51 FEET TO THE POINT OF BEGINNING.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL THE FOLLOWING PARCEL OF LAND:

BEGINNING AT A POINT LOCATED 404.28 FEET ON A COURSE OF S 87°32'13" E FROM THE MOST NORTHWEST CORNER OF THE ABOVE DESCRIBED LOT;

THENCE THE FOLLOWING COURSES AND DISTANCES:

N 70°47'58" E 181.08 FEET;  
N 70°50'01" E 232.75 FEET;  
N 70°47'58" E 20.12 FEET;  
S 25°12'02" E 6.50 FEET;  
N 79°57'28" E 33.57 FEET;  
N 70°47'58" E 36.77 FEET;  
N 70°47'58" E 226.63 FEET;

ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 603.80 FEET AN ARC DISTANCE OF 190.40 FEET, BEARING A CHORD OF S 23°07'23" W A DISTANCE OF 189.61 FEET;

S 43°11'47" E 2.93 FEET;  
S 33°30'33" W 256.74 FEET;  
S 57°20'08" W 167.99 FEET;  
N 43°25'17" W 435.50 FEET TO THE POINT OF BEGINNING CONTAINING 3.96 ACRES.

The property is also conveyed together with the benefit of the right of way as described in the Easement Deed from the City of Portland to Portland Terminal Company, dated February 25, 1971 and recorded in said Registry of Deeds in Book 3161, Page 93.

Meaning and intending to convey and hereby conveying a portion of the premises conveyed to Maine Central Road Company (a/k/a Maine Central Railroad Company by deed of Portland Terminal Company, dated December 30, 1985 and recorded in said Registry of Deeds in Book 7026, Page 287. Reference is also made to a deed from Maine Central Railroad Company (a/k/a Maine Central Road Company to Portland Terminal Company by deed of near or even date herewith to recorded in said Registry of Deeds prior herein.

THE TOTAL AREA OF THE ABOVE DESCRIBED PARCEL IS 14.86 ACRES MORE OR LESS.

Received  
Recorded Register of Deeds  
Jul 31, 2013 01:56:16P  
Cumberland County  
Pamela E. Lovley